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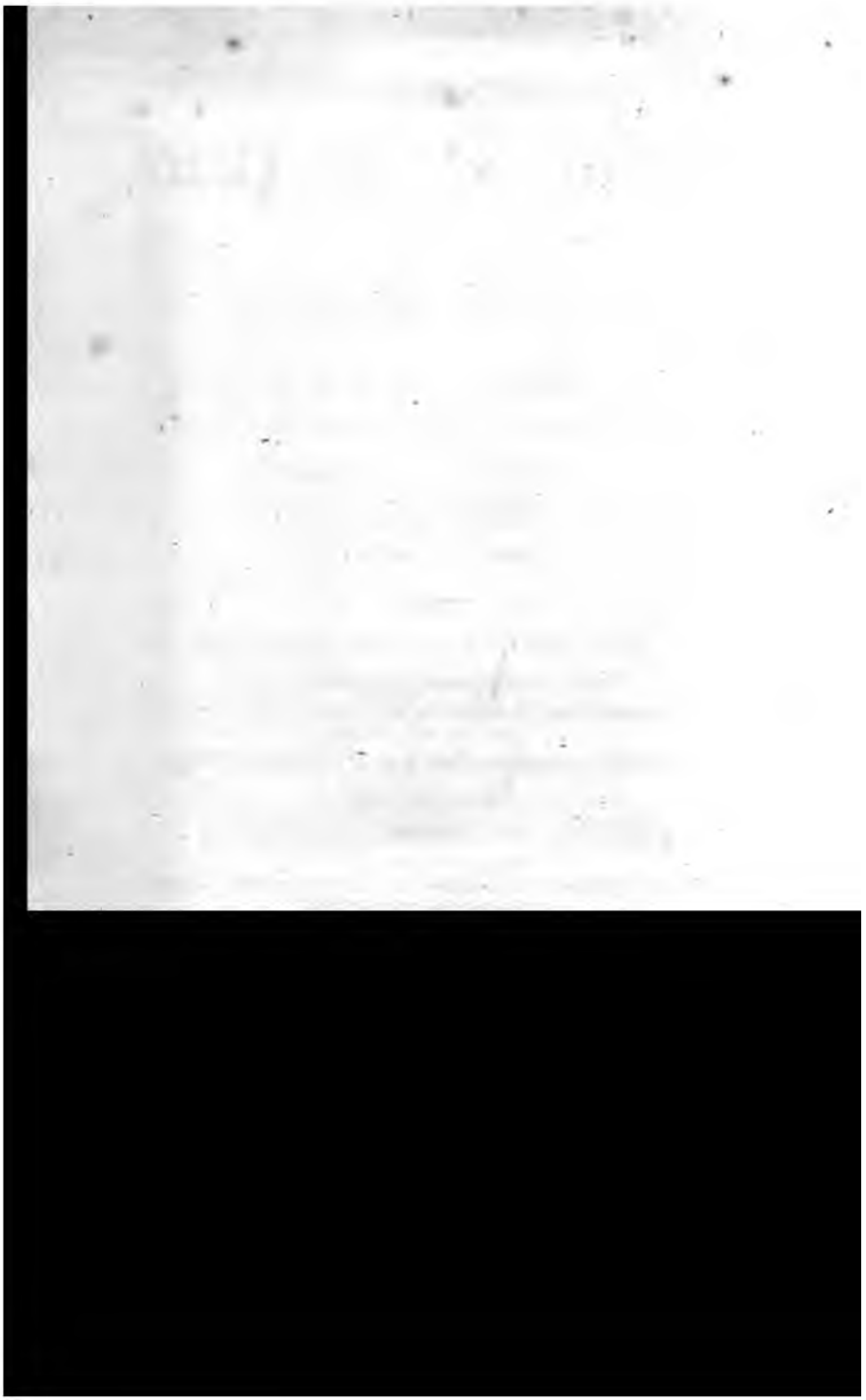
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8°. Jur. Z. 660.

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THE

Justice of the Peace,

AND

PARISH OFFICER.

By RICHARD BURN, LL.D.

LATE CHANCELLOR OF THE DIOCESE OF CARLISLE.

CORRECTED AND IMPROVED

BY SIR GEORGE CHETWYND, BART.

BARRISTER AT LAW.

THE TWENTY-FIFTH EDITION:

With CORRECTIONS and ADDITIONS.

The CASES brought down to the End of Trinity Term, 10 GEO. IV. 1829.

And the STATUTES to the End of 10 GEO. IV. 1829.

BY GEORGE WHARTON MARRIOTT, ESQ.

BARRISTER AT LAW,

LATE OF THE MIDLAND CIRCUIT, NOW ONE OF THE POLICE MAGISTRATES, QUEEN-SQUARE, WESTMINSTER.

Dr. Burn has great merit: He has done great service, and deserves great commendation. — *Per* Lord MANSFIELD C. J. Burr. S. C. 548.

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	——— Leather	238
	——— Soap	282. 285. 287. 291
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	——— Soap	291
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Excise and Customs.

As the customs and excise, so far as justices of the peace, constables, and other peace-officers are concerned therein, are in some measure connected and interwoven with each other, it is thought proper here to represent them together, that the reader may at once have a full and distinct comprehension of the whole.

Since the publication of the last edition of this work, all the laws affecting *the Customs* (contained in upwards of 450 different acts of parliament) have been repealed, and re-enacted in a consolidated form, by several statutes passed in the 6 *G.* 4. And these, again, have been in some particulars altered by subsequent statutes.

The laws relating to the collection and management of *the Excise*, which were very numerous, have also been repealed, and re-enacted, with amendments, by an act passed in the 7 & 8 *G.* 4. *c.* 53.

I. *Of the Customs in general.*
II. *Of the Excise in general.*
III. *Of the several Particulars under the Management of the Commissioners of the Customs and Excise.*

I. Of the Customs in general. (a)

(*a*) *Of the Management of the Customs.*
[6 G. 4. c. 106. — 7 G. 4. c. 48. — 9 G. 4. c. 76.]
(*b*) *Of the Regulation of the Customs.*
[6 G. 4. c. 107. — 7 G. 4 c. 48. — 7 & 8 G. 4. c. 56. — 9 G. 4. c. 76]
(*c*) *Of Smuggling.*
[6 G. 4. c. 108. — 7 G. 4. c. 48. — 7 & 8 G. 4. c. 56. — 9 G. 4. c. 76.]
(*d*) *Of the Duties.*
[6 G. 4. c. 111. — 7 G. 4. c. 48. — 7 & 8 G. 4. c. 56. — 9 G. 4. c. 76.]

§ 1. (*a*) Of the Management of the Customs.

By stat. 6 *G.* 4. *c.* 106., intituled "*An act for the management of the customs,*" § 1. reciting that by an act passed in the then ses- 6 G. 4. c. 106. Former acts repealed.

(a) Under this head the editor has not included the several acts of parliament, passed in the 6 *G.* 4. and subsequently, which relate to the *encouragement of British shipping and navigation*, the *registering of British vessels*, the *warehousing of goods*, the *bounties and allowances on exports* and imports, and the

G. 4. c. 106.

sion of parliament, (6 *G.* 4. *c.* 105.) all the laws relating to the customs were repealed, and that it was expedient to make provisions for the management of the customs and of all matters connected therewith, it is enacted that this act should commence on 5th *January* 1826, and be and continue in full force and operation for the management of the customs.

ommence-
ent of the act.

Of the Commissioners.

oard of cus-
oms, thirteen
ommissioners;
nd four assist-
nt commission-
rs for Scotland
nd Ireland.

By stat. 6 *G.* 4. *c.* 106. § 2. "It shall be lawful for H. M. from time to time to appoint, under the great seal of the U. K., any number of persons, not exceeding thirteen, to be commissioners of H. M.'s customs for the collection and for the management of the customs in and throughout the whole of the U. K., and of any of H. M.'s possessions abroad; and also to appoint any number of persons, not exceeding four, to be assistant commissioners of H. M.'s customs, to sit and act in manner hereinafter mentioned in and for *Scotland* and *Ireland;* and that each of such commissioners and assistant commissioners, when so appointed, shall have and hold his office during H. M.'s pleasure."

Treasury may
appoint com-
missioners and
assistant com-
missioners for
Scotland or Ire-
land.

§ 3. "It shall be lawful for the lord high treasurer of the U. K. of *G. B.* and *Ireland*, or for the commissioners of H. M.'s treasury of the U. K. of *G. B.* and *Ireland*, from time to time to order and direct any one or more of such commissioners, together with two such assistant commissioners, to sit and act as commissioners for executing and directing the business of the customs in *Scotland* and *Ireland* respectively, under the controul and direction of the commissioners of H. M.'s customs sitting and acting in *England*."

Commissioners
and assistant
commissioners
subject to the
controul of the
treasury.

§ 4. "The said commissioners and assistant commissioners so appointed or to be appointed by H. M. shall, in all matters and things relating to the execution of their duties, be subject to the authority, directions, and controul of the commissioners of H. M.'s treasury, and shall obey such orders and instructions as shall from



By stat. 7 *G.*4. *c.*48. § 2. Every order, document, instrument, or writing required by any law, at any time in force, to be under the hands and seals of the commissioners of H. M.'s customs, which shall be signed by two or more commissioners or assistant commissioners of the customs, shall be deemed to be an order, document, instrument, or writing under the hands and seals of the commissioners of H. M.'s customs within the meaning of such law. 7 G.4. c. 48. Signature of two commissioners to be sufficient without seals.

By stat. 6 *G.*4. *c.*106. § 6. "Any appointment of commissioners, or of assistant commissioners of H. M.'s customs, in force at the time of the commencement of this act, shall continue in force as if the same had been afterwards made under and by virtue of the authority of this act." 6 G.4. c.106. Previous appointments to remain in force.

By 9 *G.*4. *c.*76. § 2. "No commissioner or assistant commissioner of customs shall, during the time of his acting as such commissioner or assistant commissioner, be compelled to serve as a mayor or sheriff, or in any corporate, or parochial, or other public office or employment, or to serve on any jury or inquest, or in the militia." 9 G. 4. c. 76. Commissioners and others not liable to serve parochial and other offices.

Of the Officers of the Customs, Hours of Attendance, Fees, &c.

By stat. 6 *G.*4. *c.*106. § 7. "It shall be lawful for the said commissioners of H. M.'s treasury, or for the commissioners of H. M.'s customs under the authority of the said commissioners of H. M.'s treasury, to appoint proper persons to execute the duties of the several offices necessary to the due management and collection of the customs, and all matters connected therewith, under the controul and direction of the commissioners of H. M.'s customs; granting or allowing to such persons such salaries or other allowances, or permitting such emoluments for the labour and responsibility in executing the duties of their respective offices or employments, and requiring of such persons such securities for their good conduct therein as the said commissioners of H. M.'s treasury shall deem to be reasonable and necessary; and such persons shall hold their offices during the will and pleasure of the said commissioners of H. M.'s treasury, or the commissioners of H. M.'s customs sitting and acting in *England*, in such cases, and in such manner as the said commissioners of H. M.'s treasury shall direct." 6 G.4. c.106. Appointment of necessary officers of customs. Salaries and allowances, and securities.

§ 8. "Every person employed on any duty or service relating to the customs, by the orders or with the concurrence of the commissioners of H. M.'s customs (whether previously or subsequently expressed), shall be deemed to be the officer of the customs for that duty or service." (a) Persons employed by customs deemed officers for such service.

By stat. 7 *G.*4. *c.*48. § 3. "Every act, matter, or thing required by any law at any time in force to be done or performed by, to, or with any particular officer nominated in such law, for such purpose being done or performed by, to, or with any person appointed by the commissioners of H. M.'s customs, to act for or in behalf of such particular officer, the same shall be deemed to be 7 G.4. c.48. Duties of officers performed by persons and at places appointed by commissioners.

(a) As to evidence of being an officer, see the smuggling act, 6 *G.* 4. *c.* 108. § 105. *post.*

G. 4. c. 48. done or performed by, to, or with such particular officer. And every act, matter, or thing required by any law at any time in force to be done or performed at any particular place within any port, being done or performed at any place within such port appointed by the commissioners of H. M.'s customs for such purpose, the same shall be deemed to be done, or performed, at the particular place so required by law."

G. 4. c. 106. Officers taking any fee or reward not allowed, shall be dismissed.

By stat. 6 G. 4. c. 106. § 9. "If any officer (a), clerk, or other person acting in any office or employment in or belonging to the customs, under the controul and direction of the commissioners of the customs in any part of H. M.'s dominions, shall take or receive any fee, perquisite, gratuity, or reward, whether pecuniary or of any other sort or description whatever, directly or indirectly, from any person (not being a person duly appointed to some office in the customs), on account of any thing done or to be done by him, in or in any way relating to his said office or employment, except such as he shall receive under any order or permission of the said commissioners of H. M.'s treasury, every such officer so offending shall, on proof thereof to the commissioners of H. M.'s customs, be dismissed from his office; and if any person (not being a person duly appointed to some office in the customs) shall give, offer, or promise to give any such fee, perquisite, gratuity, or reward, such person shall, for every such offence, forfeit the sum of 100*l.*"

Penalty 100*l.* for offering Fee.

Previous appointments and securities to remain in force.

§ 10. "All commissions, deputations, and appointments granted to any officers of the customs, in force at the time of the commencement of this act, shall continue in force, as if the same had been afterwards granted under and by virtue of the authority of this act; and all bonds which shall have been given by any such officers and their respective sureties for good conduct or otherwise, shall remain in full force and effect."

Oath of office.

§ 11. "Every person who shall be appointed to any office or employment in the service of the customs, under the controul and direction of the commissioners of the customs in any part of



of general attendance of the commissioners and respective officers of the customs, and other persons in the service of the customs, at their proper offices and places of employment; and that it shall be lawful for the commissioners of H. M.'s customs to appoint the times, during such hours, at which any particular parts of the duties of such officers, and other persons respectively, shall be performed by them." 6 G. 4. c. 106. division of service in those hours.

§ 13. "No day shall be kept as a public holiday by the customs, except *Christmas-Day* and *Good Friday* in every year, and any days appointed by H. M.'s proclamation for the purpose of a general fast or of a general thanksgiving, and also the anniversaries of the birth-day of H. M., and of his successors." Holidays.

§ 14. "The collector of the customs in the port of *London* shall pay into the hands of the receiver-general of the customs the whole of the monies which he shall receive on account of the duties or customs, on the day on which he shall receive the same, or as near the whole as may be, save and except such sum or sums of money as shall from time to time, by virtue of the special order of the commissioners of H. M.'s customs, be directed to be deducted, paid, or allowed therefrom." Collector in London to pay duties daily to receiver-general.

§ 15. "Every sum of money which shall be due in the port of *London*, upon any debenture, certificate, or other instrument or document whatever, for the payment of any money out of the duties of customs, shall be paid by the receiver-general of the customs out of any money in his hands arising from the duties of customs, and every such payment shall be allowed by the commissioners for the better examining and auditing the public accounts of this kingdom, in the settling or auditing of the accounts of the receiver-general of the customs; and when any such payment shall become due at any other port in the U. K., the same may be paid by the collector at such port, the comptroller being duly apprised thereof, out of any of the monies in his hands arising from the duties of customs, and under such directions and instructions for the due execution of their offices, as shall from time to time be given to them by the commissioners of the customs." In London, debentures and orders to be paid by receiver-general. Payments at outports by collector.

§ 16. "It shall be lawful for the commissioners of H. M.'s customs finally to settle and close the accounts of any collectors or receivers of any part of the revenue of the customs or other duties under their management, notwithstanding any erroneous appropriation of any duties of customs received by such collectors or receivers; and the said commissioners are hereby empowered to correct such appropriation, in order to prevent the accounts of any such collectors or receivers from being kept open; and all such corrections shall be allowed by the commissioners for auditing the public accounts, in the passing the general accounts of customs, subsidies, or impositions." Commissioners may close accounts of collectors.

§ 17. "It shall be lawful for the officers and clerks in the long room of any custom-house to assist merchants and others, at their desire, in framing and passing entries inwards and outwards, and to receive such fee, freely given, for the same, as the said commissioners of H. M.'s treasury shall permit; and that it shall be lawful for the receiver of any duties of customs, to receive for his own use, if freely given, so much *as, added to* any fractions payable upon *any entry, shall amount to 6d.*; and that it shall be Fee for passing entries. Odd pence.

G. 4. c. 106.

ee for des-
itching war-
nts.

ee for writing
ockets.

lawful for the clerk of the warrants in the port of *London*, to receive from any person, at whose request any warrant for goods inwards may be despatched before the usual time, the fee of 1*s.*; and for the receiver of the duties on such warrant to receive from such person the fee of 6*d.*; and that it shall be lawful for any cocket-writer in the port of *London*, to receive from the person who shall select him to write any cocket for goods outwards, any fee which shall be agreed on between them, not exceeding 5*s.*, including the parchment, to be provided at the expense of the cocket-writer."

alaries not
ubject to
uties.

§ 18. "All salaries, allowances, or compensations granted or allowed to any officer, clerk, or other person in the service of the customs, shall be paid without any abatement or deduction on account of any duties imposed by any act of parliament, unless expressly charged thereon."

G. 4. c. 76.
fficers of cus-
oms not liable
o serve paro-
hial, and other
ffices.

By 9 *G.* 4. *c.* 76. § 2. "No officer of customs or person employed in the collection or management of, or accounting for the revenue of customs, or any part thereof, nor any clerk or other person acting under them shall, during the time of his acting as such officer, or of his being so employed as aforesaid, or of his acting as such clerk or other person as aforesaid, as the case may be, be compelled to serve as a mayor or sheriff, or in any corporate or parochial or other public office or employment, or to serve on any jury or inquest, or in the militia."

Of the Receiver-General.

G. 4. c. 106.
ll monies
eceived by
eceiver-general
f customs in
ngland shall

By stat. 6 *G.* 4. *c.* 106. § 19. Reciting that it is expedient "that regulations should be established by law in the office of the receiver-general of the customs in *England*, for depositing in the bank of *England* all the monies, bills, drafts, and notes received by such receiver-general, on account of the revenue under the management of the commissioners of customs, except as hereinafter mentioned,



ordinary and daily demands, out of the monies so received by him as such receiver-general, a sum not exceeding one thousand pounds at the close of each day; and also any further sum which he shall be directed to retain by the said commissioners, not exceeding four thousand pounds; and also any further sum, with the permission in writing of any three or more of the said commissioners of H. M.'s treasury."

ments may be retained.

§ 21. "The governor and company of the bank of *England*, or some person duly authorised in that behalf, shall daily, upon receiving any money, bills, notes, or drafts, from such receiver-general of the customs, make an entry of the money, bills, notes, and drafts so received, in a book to be provided by the governor and company of the bank of *England*, which book shall be forthwith re-delivered to the persons making the payments for the customs, and inspected daily after its return by the comptroller-general of the customs, or his clerk, (such clerk being first duly authorised by him, and for whose conduct he shall be answerable,) who shall compare the same with the account of monies, bills, notes, and drafts received by the said receiver-general, for the purpose of ascertaining that the receiver-general constantly pays into the bank all the money, bills, notes, and drafts, which he ought to do under the provisions of this act; and any default which such comptroller-general or his clerk may discover in that behalf, shall be immediately reported by him to the said commissioners of H. M.'s customs, who shall report the same, unless it shall appear to them to have happened by mistake or inadvertence, to the said commissioners of H. M.'s treasury."

Bank to keep an account, to be returned to the customs for inspection.

§ 22. "The monies placed to the account of the receiver-general as aforesaid in the bank of *England*, shall be paid into the exchequer from time to time as by law is directed, in manner following: (that is to say,) the receiver-general, or his clerk duly authorised by him for that purpose, and for whose conduct therein he shall be answerable, shall make an order weekly upon the governor and company of the bank of *England*, which order shall be countersigned by the comptroller-general or his clerk, to write off from his account the sum specified; and the said governor and company, or some person duly authorised on their behalf, shall thereupon write off such sum, and deliver a note drawn and cancelled in such manner as shall be approved by the said commissioners of H. M.'s treasury, for the amount, to the receiver-general or his clerk, who shall pay the same into the exchequer, and the bank-clerks attending there shall receive it as so much cash; and it shall not be lawful for the governor and company of the bank of *England* to pay or transfer any part of the money so paid in and placed to the account of such receiver-general, from such account, otherwise than into the exchequer in manner aforesaid, and except in the manner hereinafter directed, or to deliver any note or notes, bill or bills of exchange, save and except to the solicitor of the customs or his clerk, upon his application for the same, together with the receiver-general or his clerk, and the comptroller-general or his clerk, for the sole purpose of taking out an extent for the security of the money for which such bill of exchange or draft shall have been given, or to the said receiver-general or his clerk, any bills, notes, or drafts which may be protested for non-payment, except as hereinafter is *mentioned, in which* case the commis-

Money carried to the exchequer to be written off at the bank.

3 & 4 c. 106.

sioners of H. M.'s customs shall be immediately acquainted therewith, if sitting, by such solicitor, receiver-general, or comptroller-general, or if not sitting, at the time of their assembling; and such delivery shall be entered by the bank in the book to be kept as is herein-directed."

Receiver-general may draw on the bank to pay drawbacks, &c.

§ 23. "In order that the several payments directed by order of the commissioners of H. M.'s customs in *England*, to be made by the said receiver-general to merchants or any other persons on account of drawbacks or bounties, or on any other account whatever, may be made without delay, and for the payment of which the money then in the hands of the said receiver-general shall be insufficient, it shall be lawful for the said receiver-general, or his clerk deputed and authorised by him for that purpose, and for whose conduct therein he shall be answerable, to draw out of the bank of *England*, as occasion may require, such sum or sums of money as may be sufficient to answer the purpose aforesaid; and that every draft or order on the bank for money for any of the said purposes, shall be countersigned by the comptroller-general or his clerk, to be deputed and authorised by him for that purpose, and for whose conduct therein he shall be answerable: and that the said receiver-general shall from time to time account for the monies so to be drawn by him or his clerk out of the bank."

Drafts to be countersigned by comptroller general.

Officers of the Exchequer to be furnished with appropriation paper.

§ 24. In order that separate accounts may be kept at the exchequer of the monies paid in on various branches of the customs pursuant to law, it is enacted, "that the said receiver-general of the customs shall, on every *Monday* morning, furnish the proper officers of the exchequer with an appropriation paper, stating the heads under which the receipts of the preceding week is to be applied."

On the death or removal of receiver-general, the balance to vest

§ 25. "Upon the death, resignation, or removal of the present and of every other receiver-general of the customs hereafter to be appointed, the balance of cash for which he shall at that time have credit on his account as such receiver-general with the

[redacted]

feited, or knowingly and wilfully act or assist in forging or counterfeiting, the name or handwriting of any receiver-general of the customs, or of any comptroller-general of the customs, or of any person acting for them respectively as aforesaid, to any draft, instrument, or writing whatsoever, for or in order to the receiving or obtaining any of the money in the hands or custody of the governor and company of the bank of *England*, on account of the receiver-general of the customs; or shall forge or counterfeit, or cause or procure to be forged or counterfeited, or knowingly and wilfully act or assist in the forging or counterfeiting any draft, instrument, or writing in form of a draft made by such receiver-general or person as aforesaid; or shall utter or publish any such, knowing the same to be forged or counterfeited, with an intention to defraud any person whomsoever; every such person or persons so offending, being thereof lawfully convicted, shall be and is and are hereby declared and adjudged to be guilty of felony, and shall suffer death as in cases of felony without benefit of clergy." 6 G. 4. c. 106.

Of administering Oaths.

By stat. 6 *G.* 4. *c.* 106. § 28. "In all cases wherein proof on oath shall be required by any law, or shall be necessary for the satisfaction or consideration of the commissioners of his majesty's customs, in any matter relating to any business under their management, the same may be made before the collector or comptroller of the customs, at the port where such proof shall be required to be made, or before the persons acting for them respectively, and who are hereby authorized and empowered to administer the same." Collectors, &c. authorised to administer oaths.

Of bribing Officers.

By stat. 6 *G.* 4. *c.* 106. § 29. "If any person shall give, or offer, or promise to give any bribe, recompence, or reward to any officer of the customs, or any person employed by or under the direction of the commissioners of H. M.'s customs, to induce him in any way to neglect his duty, or to do, conceal, or connive at any act whereby any of the provisions of any act of parliament may be evaded, every such person shall, whether the offer be accepted or not, forfeit the sum of 500*l.*" Offer of bribe to officers. Penalty 500*l.*

Of Seizures.

By stat. 6 *G.* 4. *c.* 106. § 30. "All goods, and all ships, vessels, and boats, which by any act at any time in force shall be declared to be forfeited, may be seized by any officer of the customs." Goods and vessels forfeited, to be seized by officers of customs.

Of Surveyors-General, examining Witnesses, &c.

By stat. 6 *G.* 4. *c.* 106. § 31. "Upon examinations and enquiries made by any surveyor-general of the customs, or any inspector-general of the customs, for ascertaining the truth of facts relative to the customs, or the conduct of officers or persons employed therein, and upon the like examinations and enquiries made by the collector and comptroller *of any outport in the* U. K., or of any port Surveyors-general, &c. may examine witnesses on oath.

6 G. 4. c. 106.

in the *Isle of Man*, or made by any person or persons in any of the *British* possessions abroad, appointed by the commissioners of H. M.'s customs to make such examinations and enquiries, any person examined before him or them as a witness shall deliver his testimony on oath, to be administered by such of the surveyors-general, or such of the inspectors-general, or such collector and comptroller, or such person or persons as shall examine him, and who are hereby authorised to administer such oath; and if such person shall be convicted of making a false oath, touching any of the facts so testified on oath, or of giving false evidence on his examination on oath, before any of the surveyors-general or inspectors-general of the customs, or such collector and comptroller, or such person or persons, in conformity to the directions of this act, every such person so convicted as aforesaid shall be deemed guilty of perjury, and shall be liable to the pains and penalties to which persons are liable for wilful and corrupt perjury."

False oath deemed perjury.

Of the Commissioners in Ireland.

Jurisdiction over offences by board of commissioners of customs, within the district of Dublin.

By stat. 6 *G.* 4. *c.* 106. § 32. "The district comprehending the city, suburbs, and liberties of *Dublin*, and the port of *Dublin*, and several creeks and members thereof, and all parishes, parts, and places of the city and county of the city of *Dublin* and county of *Dublin*, and all and every the baronies, parts, and places of the same, shall be subject to the rule and government of the commissioners and assistant commissioners of customs in *Ireland*, in all matters relating to the collecting, managing, and levying all revenues of customs within the same; and that all complaints and informations for the recovery of any fine, penalty, or forfeiture, for any offence against, or any breach of any act or acts in force in *Ireland*, relating to the revenues, matters, and things under the management of the said commissioners and assistant commissioners in *Ireland*, which shall be committed within the said district, shall



vernors of *Ireland*; and any three or more of such sub-commissioners in their respective districts, shall and lawfully may hear and determine any complaint or information for or relating to any offence against any such act or acts as aforesaid; and any judgment or execution which shall be given or awarded by the majority of such sub-commissioners sitting on the trial of any such complaint or information, shall be valid and effectual to all intents and purposes whatsoever." 6 G.4. c.106.

§ 34. "It shall and may be lawful for any persons, whether informer, claimant, or defendant, who shall think himself or herself aggrieved or injured by, or who shall be dissatisfied with any judgment or sentence of the said commissioners and assistant commissioners, or any of their sub-commissioners, to make his or her appeal to the lord-lieutenant or other chief governor or governors of *Ireland*, or to commissioners of appeal to be appointed by such lord lieutenant or other chief governor or governors, pursuant to an act made in the parliament of *Ireland* in the fourteenth and fifteenth years of the reign of King *Charles* the second, for settling of the excise or new impost upon H. M., his heirs and successors: Provided always, that such appeal shall be made within the space of two calendar months next after such judgment or sentence shall be given; and that in default thereof no such appeal shall afterwards be received; and that the party who shall make such appeal shall serve the injunction grounded on such appeal within the space of twenty days next after such appeal shall be lodged, or in default thereof such judgment or sentence so appealed from shall be final and conclusive: and when any such appeal shall be brought before any such commissioners of appeal, the commissioners or sub-commissioners by whom such judgment or sentence shall have been had or given shall, within twenty-one days next after service of the injunction to stop their proceedings, transmit under cover, sealed up and directed to the registrar of the said commissioners of appeals, a true copy attested by one of such commissioners or sub-commissioners, of all the proceedings and proofs in the cause in which such judgment or sentence was given; and in default thereof, such commissioners or sub-commissioners shall respectively forfeit the sum of 10*l.* each, unless the delay be satisfactorily accounted for by affidavit before the commissioners of appeals; and whenever it shall appear on any such appeal that the matter of any case hath not been tried, it shall be lawful for such commissioners of appeals to remand the proceedings to the commissioners or sub-commissioners by and before whom the judgment or sentence appealed against was given." Commissioners of appeal and their powers. Limitation of appeals.

Of Lands and Buildings for the Customs.

This act contains several clauses relating to the purchase and sale of lands and buildings for the customs (*viz.* clauses 35. to 52. inclusive) but of which it appears unnecessary to insert more than the following, which give jurisdiction to justices, and direct the proceedings in certain cases; *viz.*

By stat. 6 *G.4. c.* 106. § 43. "In case any such bodies or other persons hereby authorised to contract on behalf of themselves or others as aforesaid, or any other person or persons interested in any such lands so *marked out, or in any messuages*, tenements, here- Persons refusing to sell or to accept the consideration offered, two

6 G.4. c.106.

tices, &c. may put H. M.'s officers into possession, and a jury shall be summoned, who shall find the compensation to be made.

ditaments, or premises required as aforesaid, shall, for the space of fourteen days next after notice in writing subscribed by such person or persons authorised as aforesaid shall have been given to the principal officer or officers of any such body, or to such other persons hereby authorised to contract on behalf of others, or interested themselves as aforesaid, or left at his, her, or their usual place of abode, refuse or decline to treat or agree, or by reason of absence shall be prevented from treating or agreeing with such person or persons authorised as aforesaid, or shall refuse to accept such annual rent or sum as shall be offered for the hire thereof, either for a time certain, or for such period as the public service may require; and in case also it shall not be practicable to procure, by voluntary bargain or sale, any other land situate as aforesaid, or of any messuages, tenements, hereditaments, or premises required as aforesaid, and suited to the purpose for which such lands, messuages, tenements, hereditaments, or premises are required, then and in such case it shall be lawful for two or more justices, or three or more deputy lieutenants (one of whom shall be a justice of the peace) or two or more deputy governors for the county, riding, stewartry, city, or place wherein such lands, tenements, messuages, hereditaments, or premises shall be, to put his majesty's officers in possession of such lands, messuages, tenements, hereditaments, or premises; and for that purpose to issue a warrant, under their hands and seals, requiring possession to be delivered to such of his majesty's officers as shall be named in the said warrant; and it shall also be lawful for such person or persons so authorised as aforesaid, to require the said justices, deputy lieutenants, or deputy governors of such county, riding, stewartry, city, liberty, or place, to issue their warrant to the sheriff or sheriffs of the county, riding, stewartry, city, or place wherein such lands, messuages, tenements, hereditaments, or premises shall be situate, to summon a jury; and every such sheriff or sheriffs is and are hereby authorised and required to summon and return a jury, properly quali-

6 G. 4. c. 106.

Lands that are suitable may be taken in lieu of such as have been marked out.

§ 44. "Provided, that if the owner or owners of any lands, messuages, tenements, hereditaments, or premises so required, or any person or persons interested therein, shall at any time before the summoning of such jury as aforesaid, give notice in writing of any other lands situate as aforesaid, and of any other messuages, tenements, hereditaments, or premises so required as aforesaid, and suited to the purpose for which such lands are required, and which the owner or owners thereof, or persons interested therein, are willing to treat and agree for, then and in such case the jury so to be summoned shall previously find the facts, whether the lands so indicated in such notice are situate within the distance aforesaid, and are suited to the purpose for which such lands, tenements, messuages, hereditaments, or premises may be required, and whether the owner or owners thereof, or persons interested therein, are willing to treat and agree for the same; and if they shall so find, the owner or owners of or persons interested in the lands so surveyed or marked out as aforesaid, or of the messuages, tenements, hereditaments, or premises so required, shall not be compellable by virtue of this act to sell or dispose of the same: Provided always, that where the owner or owners of or persons interested in any lands, messuages, tenements, hereditaments, or premises required by virtue of this act to be given up for the purposes aforesaid, shall prefer to sell the same outright, and shall be able to make a good title to the fee-simple thereof, it shall be lawful for them to insist on so doing; and in such case the jury so summoned as aforesaid shall find the value of the fee-simple of such lands, tenements, messuages, hereditaments, or premises, and the same shall be paid to the owner or owners thereof, or persons interested therein, in the manner directed by this act."

If any person be dissatisfied with verdict, appeal may be made to the court of exchequer in England or Ireland, or to the court of session, &c. in Scotland.

§ 45. "Provided, that if the said lord high treasurer, or the said commissioners of H. M.'s treasury, or any person interested therein, shall be dissatisfied with the verdict of any such jury, it shall be lawful for them, or their attornies in *England* and *Ireland*, to apply to the court of exchequer at *Westminster* or *Dublin* respectively, in the next term, and in *Scotland* to apply within fourteen days after the finding any such verdict, to the court of sessions in *Scotland* in time of session, or lord ordinary on the bills in time of vacation, and to suggest to the said courts or lord ordinary respectively, that they have reason to be dissatisfied with such verdict, and forthwith to give notice thereof to the said lord high treasurer or commissioners, or party (as the case may be), and thereupon in *England* and *Ireland* the proceedings that shall have been had, and the verdict of such jury, shall be returned into the said courts of exchequer respectively; and if it shall appear to the said courts to be proper, a suggestion shall be entered on such proceedings as aforesaid, and a writ shall thereupon, by rule of such court, or order of any judge of such court, be directed to the sheriff of such county where the lands shall lie, or the messuages, tenements, hereditaments, or premises shall be, or if the same shall lie or be in two counties, to the sheriff of either of such counties, to summon either a common or special jury, according to the application that shall have been made on that behalf, and as the court or such judge shall allow, and who shall respectively be qualified according to law to appear before the said justice of assize or *nisi prius* of that county, at the next assizes or sittings of

1 G. 4. c. 106.

nisi prius, if the same shall not happen sooner than twenty-one days after such suggestion, otherwise at the next succeeding assizes or sittings, and the compensation to be paid for the possession or use of such lands, messuages, tenements, hereditaments, or premises, shall at such assizes or sittings be ascertained by such jury, in like manner as any damages may be enquired of upon any inquisition or enquiry of damages by any jury before any judge of assize or *nisi prius*, and the verdict of such jury shall be returned to the said courts of exchequer, and shall be final and conclusive; and in *Scotland*, if it shall appear proper to the said court of session or lord ordinary, upon such application so to do, the said court or ordinary shall order and direct the sheriff of the county where such lands, messuages, tenements, hereditaments, or premises shall lie and be, or if the same shall lie or be in two counties, the sheriff of either of such counties, to summon another jury in the manner in which juries are summoned in *Scotland*, properly qualified according to law, to appear before the lords or lord of justiciary at the next circuit, if the same shall not happen sooner than twenty-one days after such application, otherwise at the next succeeding circuit; and the compensation as aforesaid for the land, messuages, tenements, hereditaments, and premises shall, at such circuit, be ascertained by a jury drawn from the jury summoned as aforesaid, in such manner as juries are drawn in *Scotland*, under the direction of the said lords or lord of justiciary as aforesaid; and the verdict of such last-mentioned juries shall be final and conclusive, without being subject to review or challenge of any kind, unless the court that shall have allowed such enquiry shall think fit, on any application made within four days after the commencement of the succeeding term or session, if in *Scotland*, to order any new trial in relation thereto."

ury, in ascertaining compensation for premises, to settle

§ 46. "Provided that it shall be lawful for any jury impannelled before any justice of the peace, magistrate, deputy lieutenant, or deputy governor, or before any judge of assize or *nisi prius*, to ascertain the compensation to be paid for any lands under



jury is confirmed by the jury on such enquiry, to alter the proportion that shall have been settled by any such former jury, as to any separate interest in any such lands, tenements, messuages, hereditaments, or premises." 6 G.4. c.106.

§ 47. "Provided that it shall be lawful for the court or judge, or lord ordinary, making any such rule or order, to require that the party, on whose application the same shall be made, shall give such security as shall to such court, judge, or lord ordinary seem proper, for payment of costs, under such circumstances as shall be specified in any rule or order made for that purpose." Security to be given for costs.

§ 48. "In all cases where any lands shall be taken under the provisions of this act, for any term of years or for such period only as the public service shall require, it shall be lawful for the lord high treasurer or commissioners of H. M.'s treasury, or any other person or persons so authorised as aforesaid, at any time before the possession of any lands which shall have been taken for the purposes aforesaid shall be delivered up to the owner or owners thereof, or other person or persons acting on his, her, or their behalf, to take down and remove all such buildings or other erections which shall or may have been built or erected thereon for the public service, and to carry away the materials thereof; making such compensation to the owner or owners of such lands, or other person or persons acting on his, her, or their behalf, for the damage or injury which may have been done thereto, or to the soil thereof, by the erection of any such buildings, or removing and carrying away the same, or otherwise, in consequence of the same having been occupied for the public service, as the said lord high treasurer, or the commissioners of H. M.'s treasury, or such other person or persons authorised as aforesaid, shall think reasonable, and as shall be agreed upon in that behalf; and if such owner or owners, or other person or persons acting on his, her, or their behalf, shall not be willing to accept the compensation so offered, it shall be lawful for the said lord high treasurer, or the commissioners of H. M.'s treasury, or other person or persons so authorised as aforesaid, to apply to and require two justices of the peace of the county, riding, stewartry, city, or place, to settle and ascertain the compensation which ought to be made for such damage or injury as aforesaid; and such justice shall settle and ascertain the same accordingly, and shall grant a certificate thereof; and the amount of such compensation, so settled and ascertained and certified, shall forthwith be paid by warrant of the commissioners of H. M.'s treasury, or any three or more of them, to the person or persons entitled thereto: Provided always, that nothing in this act contained shall extend, or be construed to extend, to alter, prejudice, or affect any agreement which hath been or shall or may be entered into, by any such person or persons authorised as aforesaid, with any owner or owners of any such lands, or other person or persons acting on his, her, or their behalf, in relation to any such buildings or erections, but every such agreement shall remain valid and effectual in like manner as if this act had not passed." Upon delivering up lands to the owners, all erections for the public service to be removed, making compensation to the the owners.

6 G. 4. c. 106.

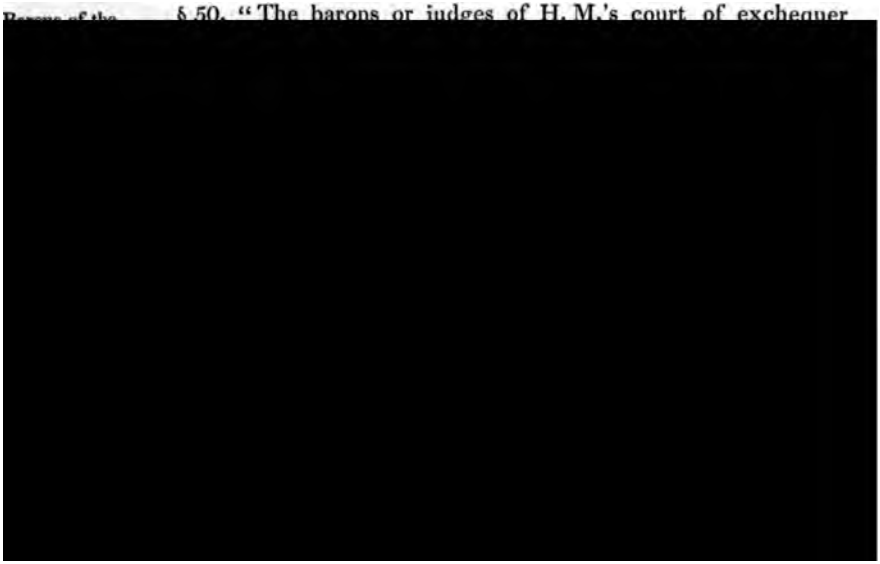
Purchase-money belonging to incapacitated persons, &c. to be paid to the proper officer of the exchequer for their use.

§ 49. "In all cases where any money shall have been or shall be agreed, or shall have been or shall be found by the verdict of any jury, to be paid or given for the use or possession of any lands, messuages, tenements, hereditaments, or premises taken by virtue of this act, belonging to any person or persons under any disability or incapacity, or not having the absolute interest therein, the same shall be paid by warrant of the commissioners of H. M.'s treasury, or any three of them into the hands of the proper officer of H. M.'s court of exchequer at *Westminster*, *Edinburgh*, or *Dublin* respectively for the time being, for receiving the monies belonging to the suitors of the said court respectively, for the use and benefit of such person or persons; and such officer is hereby authorised and required to receive or accept and to give a discharge for such money; and upon the acceptation or receipt thereof to sign a certificate to the barons or judges of the said courts of exchequer respectively, under his hand, purporting and signifying that such money or other consideration was received or accepted by and paid to him in pursuance of this act, for the use and benefit of such person or persons who shall be named and described in such certificate, and the said certificate shall be filed or deposited in the said court of exchequer at *Westminster*, *Edinburgh*, or *Dublin* respectively; and a true copy thereof, signed by such officer of such court, shall and may be read and allowed as evidence for the purposes hereinafter mentioned; and such officer of such court is hereby required, upon receipt of any such sum or sums of money as aforesaid, to pay the same into the bank of *England*, or bank of *Scotland*, or royal bank of *Scotland*, or bank of *Ireland*, as the case may require; and immediately upon the filing or depositing of such certificate the said lands, messuages, tenements, hereditaments, or premises, shall be vested in or to the use of his majesty, his heirs and successors.

Money to be paid into the bank.

Powers of the

§ 50. "The barons or judges of H. M.'s court of exchequer



ing of the said money, or any part thereof, and the interest of the same, or any part thereof, for the benefit of the person or persons respectively, or for appointing any person or persons to be trustee or trustees for all or any of such purposes, as the said courts respectively shall think just and reasonable." 6 G.4. c.106.

§ 51. "Upon the death, removal, or resignation of any such officer of the said courts of exchequer, all stocks and securities vested in him by virtue of this act shall vest in the succeeding officer of the exchequer, for the purposes herein-before mentioned, without any assignment or transfer; and all monies paid in the said banks respectively in pursuance of this act, or remaining in the hands of any such officer, at his death, resignation, or removal, and not vested in the funds, or placed out on securities as aforesaid, shall be paid over to the succeeding officer, for the like purpose for the time being." On the death, removal, or resignation of officer of exchequer, stocks and securities shall vest in successor.

§ 52. "Provided that nothing in this act contained shall be construed to extend to any garden or pleasure-ground, or to any land immediately contiguous to and used as the curtilage or homestead of any dwelling-house." Gardens not to be affected.

Of the Signature of the Lords of the Treasury.

By 6 *G.4. c.*106. § 53. "Every order, document, instrument, or writing, relating to the customs or to the law of navigation, required by any law at any time in force to be under the hands of the commissioners of H. M.'s treasury, being signed by three or more of such commissioners, shall be deemed to be an order, document, instrument, or writing under the hands of the commissioners of H.M.'s treasury accordingly." Documents signed by three commissioners of the treasury to be deemed the act of the whole commissioners.

§ 1. (b) Of the Regulation of the Customs.

By stat. 6 *G.4. c.*107. intituled "*An act for the general regulation of the customs,*" § 1. reciting, that by an act passed in the then session of parliament (6 *G.4. c.*105.) all the laws relating to the customs were repealed, and that it was expedient to make provisions for regulating the customs; it is enacted, that this act should commence on the 5th *January* 1826, and be and continue in full force and operation for the general regulation of the customs of the U. K. and of the *Isle of Man*. 6 G.4. c. 107. Former acts repealed. Commencement of the act.

The provisions of this act relate generally to the manner of and the conditions upon which the trade of the U. K. and the *Isle of Man*, whether inwards, outwards, or coastwise, is directed to be carried on; and contains tables of the several kinds of goods prohibited, either for exportation or importation, or which are made subject to the restrictions imposed by the act. But as the whole of the enactments of this statute refer to matters exclusively within the jurisdiction of the commissioners of customs, their officers and agents, and which are in nowise cognizable by justices of the peace, it has been deemed proper to omit them in this work.

The subsequent statutes, 7 *G.4. c.* 48., 7 & 8 *G.4. c.*56., and 9 *G.4. c.* 76., contain some enactments altering various parts of the former act; but which, for the same reasons, are also omitted.

§ 1. (c) Of Smuggling.

G. 4. c. 108. Former acts repealed.

By stat. 6 *G.* 4. *c.* 108., intituled "*An act for the prevention of smuggling*," § 1. reciting, that by an act passed in the then session of parliament (6 *G.* 4. *c.* 105.) all the laws relating to smuggling were repealed, and that it was expedient to make provisions to prevent or punish any infraction of the laws relating to the customs then made, or which might thereafter be made; it is enacted, that this act should commence on the 5th *January* 1826, and be and continue in full force and operation for the prevention of smuggling, and should extend and be construed to extend to any law in force, or thereafter to be made relating to the revenue or management of the customs.

Commencement of the act.

Of Vessels and Boats.

Any vessel belonging wholly or in part to H. M.'s subjects, found within certain distances of the coast of the U. K. with prohibited goods on board, and not proceeding on her voyage, forfeited. (*a*)

By stat. 6 *G.* 4. *c.* 108. § 2. "If any vessel or boat belonging in the whole or in part to H. M.'s subjects, or whereof one half of the persons on board or discovered to have been on board the said vessel or boat shall be subjects of H. M., shall be found within four leagues of the coast (*b*) of that part of the U. K. which is

(*a*) And see 7 & 8 *G.* 4. *c.* 56. § 9. *post.*

(*b*) Although the court of K. B. will take judicial notice of the general division of the kingdom into counties, because they are continually in the habit of directing their process to the sheriffs of those counties, and because they are mentioned in a great variety of acts of parliament, they will not take judicial notice of the local situation and distances of the different places in the counties of *England* from each other; and, therefore, where a return to a writ of *habeas corpus* stated that the prisoner was found on board a vessel, discovered within eight leagues of that part of the coast of *G. B.* called *Suffolk*, to wit, within eight leagues of *Orfordness* in that county, it was held not to be averred with sufficient certainty, that the vessel was not within four leagues of the coast of *G. B.* between the *North Foreland* in *Kent*, and *Beachy Head* in *Sussex*. *Deybel's case*, *H.* 1 & 2 *G.* 4. 4 *B.* & *A.* 243.

The court of K. B. will not take judicial notice of the local situation of

between the *North Foreland* on the coast of *Kent* and *Beachy Head* on the coast of *Sussex*, or within eight leagues of the coast of any other part of the said U. K., or shall be discovered to have been within the said distances, not proceeding on her voyage, wind and weather permitting, having on board or in any manner attached or affixed thereto, or having had on board or in any manner attached or affixed thereto, or conveying or having conveyed in any manner, any goods whatsoever liable to forfeiture by this or any other act relating to the revenue of customs upon being imported into the said U. K., then not only all such goods, together with their packages, and all goods contained therein, but also the vessel or boat, together with all her guns, furniture, ammunition, tackle, and apparel, shall be forfeited: Provided always, that such distance of eight leagues may and shall be measured in any direction between the southward and eastward of *Beachy Head;* and the provisions of this act shall extend to such distance of eight leagues in every direction from *Beachy Head*, although any part of such limits may exceed the distance of four leagues from any part of the coast of *G. B.* to the eastward of *Beachy Head* aforesaid." 6 G. 4. c. 108.

§ 3. "If any vessel or boat, not being square-rigged, belonging in the whole or in part to H. M.'s subjects, or whereof one half of the persons on board or discovered to have been on board the said vessel or boat shall be subjects of H. M., shall be found in any part of the *British* or *Irish* channels, or elsewhere on the high seas, within one hundred leagues of any part of the coasts of the U. K., or shall be discovered to have been within the said limits or distances, having on board or in any manner attached or affixed thereto, or having had on board or in any manner attached or affixed thereto, or conveying or having conveyed in any manner, any brandy or other spirits in any cask or package of less size or content than forty gallons, (excepting only for the use of the seamen then belonging to and on board such vessel or boat, not exceeding two gallons for each seaman,) or any tea exceeding six pounds weight in the whole, or any tobacco or snuff in any cask or package whatever, containing less than four hundred and fifty pounds weight, or packed separately in any manner within any such cask or package, (except loose tobacco for the use of the seamen, not exceeding five pounds weight for each seamen,) or any cordage or other article adapted and prepared for slinging small casks, or any casks or other vessels whatsoever capable of containing liquids, of less size or content than forty gallons, of the sort or description used or intended to be used or fit or adapted for the smuggling of spirits, or any materials for the forming, making, or constructing such casks or vessels, or any syphon, tube, hose, or implements whatsoever, for the broaching or drawing any fluid, or any articles or implements or materials adapted for the repacking tobacco or snuff, (unless the said cordage or other articles as aforesaid are really necessary for the use of the said vessel or boat, or are a part of the

Any vessel or boat (not square-rigged) belonging wholly or in part to H. M.'s subjects, and found in the British or Irish channels, or elsewhere within 100 leagues of the coast, with spirits or tobacco in certain packages, or with certain other goods on board, forfeited.

fact to be due proof which is not the proof required by the statute. He ought, therefore, to state what it was, and then the Court will be enabled to form a judgment whether he has judged right. The prisoner was discharged. *Nash's case, E. 1 & 2 G. 4. 4 B. & A. 295.*

G. 4. c. 108.

cargo of the said vessel or boat, and included in the regular official documents of the said vessel or boat,) then and in such case the said spirits, tea, tobacco, or snuff, together with the casks or packages containing the same, and the cordage or other articles, and also the vessel or boat, with all her guns, furniture, ammunition, tackle, and apparel therein, shall be forfeited."

ny foreign essel (not uare-rigged, which there all be one or ore subjects of I. M. found, or aving been ithin certain istances of the oast, having on oard spirits, ea, or tobacco n small quanti- ies, forfeited.

§ 4. "If any foreign vessel or boat (not being square-rigged), in which there shall be one or more subjects of H. M., shall be found within four leagues of that part of the U. K. which is between the *North Foreland* on the coast of *Kent*, and *Beachy Head* on the coast of *Sussex*, or within eight leagues of any other part of the coast of the U. K., to be measured as aforesaid, or shall be discovered to have been within the said distances, not proceeding on her voyage, wind and weather permitting, having on board or in any manner attached or affixed thereto, or having had on board or in any manner attached or affixed thereto, or conveying or having conveyed in any manner, any brandy or other spirits, in any cask or package of less size or content than forty gallons, (except only for the use of the seamen belonging to and on board such vessel, not exceeding two gallons for each seamen,) or any tea exceeding six pounds weight in the whole, or any tobacco or snuff in any cask or package whatsoever, containing less than four hundred and fifty pounds weight, or packed separately in any manner within such cask or package, (except loose tobacco for the use of the seamen, not exceeding five pounds weight for each seaman on board such vessel,) that then such vessel or boat, with all her guns, furniture, ammunition, tackle, and apparel, shall be forfeited."

Any foreign vessel whatever found at anchor, or hovering within one league of the

§ 5. "If any foreign vessel (*a*) whatsoever shall be found within one league of the coast of the U. K., not proceeding on her voyage, wind and weather permitting, having on board or in any manner attached or affixed thereto, or having had on board or in any manner attached or affixed thereto, or conveying or having conveyed in

any part of the cargo to prevent seizure thereof, that then and in such case the said vessel or boat, with all her guns, furniture, ammunition, tackle, and apparel, shall be forfeited." 6 G. 4. c. 108.

§ 7. "If any vessel (not being square-rigged, nor a galiot of not less than fifty tons burthen,) or any boat coming from *Brest* on the coast of *France*, or from any place between *Brest* on the coast of *France* and *Cape Finisterre* on the coast of *Spain*, including all islands on the coast of *France* and *Spain* between those places, or coming from any place between the *Helder Point* on the coast of *Holland* and *North Bergen* on the coast of *Norway*, or from any place as far up the *Cattegat* as *Gottenburgh*, including all the islands on the coasts between those places, shall arrive in any of the ports of the U. K., or shall be found at anchor or hovering within the limits (*a*) of any of the ports thereof, and not proceeding on her voyage, wind and weather permitting, having on board, for the use of the seamen then belonging to and on board such vessel or boat, any spirits exceeding one half gallon for each seaman, or having on board any tea, exceeding four pounds weight in the whole, or having on board any tobacco (excepting loose tobacco, not exceeding two pounds weight for each seaman,) then not only all such goods, but also the vessel or boat, with all her materials, shall be forfeited." Vessels (not square-rigged) coming from Brest, or places between Brest and Cape Finisterre, having on board for the use of the seamen spirits, &c. exceeding a certain quantity, forfeited.

§ 8. "If any vessel (not being square-rigged, nor a galiot of not less than fifty tons burthen,) or any boat coming from any place between *Brest* on the coast of *France* and the *Helder Point* on the coast of *Holland*, including the *Texel Isle*, and all places on the *Zuyder-Zee*, and all islands on the coasts of *France*, the *Netherlands*, and *Holland*, between *Brest* and the *Texel*, shall arrive in any of the ports of the U. K., or shall be found at anchor or hovering within the limits of any of the ports thereof, and not proceeding on her voyage, wind and weather permitting, having on board, for the use of the seamen then belonging to and on Vessels (not square-rigged) coming from places between Brest and the Helder, having on board, for the use of the seamen, spirits, &c. exceeding a certain quantity, forfeited.

(*a*) *Souden's case*, *H.* 1 & 2 *G.* 4. 4 *B.* & *A.* 294. In this case, the return to the *habeas corpus* stated that the prisoner, on the 11th of *September*, 1820, was duly convicted, for that he being a subject of H. M. was found on board a certain ship or vessel, to wit, a passage-vessel called *The Rose in June*, the said vessel being liable to forfeiture under the provisions of two acts of parliament, viz. 24 *G.* 3. sess. 2. c. 47. § 1. and 42 *G.* 3. c. 82. § 1., for having, after the passing of those acts and of the 46 *G.* 3. c. 121., been found at the fish-market within the limits of the ancient town of *Rye*, in the county of *Sussex*, having on board divers large quantities of *East India* silk handkerchiefs, &c. It then stated that the prisoner was adjudged, in consequence thereof, to forfeit the sum of 100*l.*, and that for default of payment he was committed to the common gaol.—*Lawes* Serjt. objected to this return, that the offence was not sufficiently stated. This depends on the 24 *G.* 3. sess. 2. c. 47., by which it is enacted, that if any ship or vessel shall be found at anchor or hovering within the limits of any of the ports of this kingdom, or within four leagues of the coast thereof, having on board any goods liable to forfeiture, such ship shall be liable to forfeiture. Here it is only stated, that the ship was found in the fish-market within the limits of the ancient town of *Rye*. Unless the ship be liable to forfeiture, the defendant has not incurred any penalty. The Court, (after hearing counsel in support of the return, who cited *Rex* v. *Hawkins*, *Fort.* 272. and *Rex* v. *Elwell*, *Bart.* 2 *Str.* 794.) were of opinion, that the objection was well founded, the *corpus delicti* not being sufficiently stated, inasmuch as it was quite consistent with the return that the vessel might be in the fish-market in the ancient town of *Rye*, but drawn up on the land, which would clearly not be a case within the statute. *Per Cur.* The prisoner must be discharged. Where a return to a *habeas corpus* stated that a vessel, with smuggled goods on board, was found at the fish-market, within the limits of the ancient town of *Rye*; Held, that it did not come within stat. 24 G. 3. sess. 2. c. 47. § 1.

G. 4. c. 108.

board such vessel or boat, any spirits exceeding one half gallon for each seaman, or having on board any tea exceeding two pounds weight in the whole, or having on board any tobacco, except loose tobacco, not exceeding one pound weight for each seaman, then not only all such goods, but also the vessel or boat, with all her materials, shall be forfeited."

Vessels found or discovered within certain distances of Guernsey, &c. having on board goods liable to forfeiture, upon being imported, &c. into those islands, forfeited with such goods and packages.

§ 9. "If any vessel or boat, whether *British* or foreign, shall be found or discovered to have been within one league of the islands of *Guernsey*, *Jersey*, *Alderney*, *Sark*, or *Man* respectively, not proceeding on her voyage, wind and weather permitting, or within any bay, harbour, river, or creek of or belonging to any one of the said islands, having on board or in any manner attached or affixed thereto, or having had on board or in any manner attached or affixed thereto, or conveying or having conveyed in any manner within the said last-mentioned distances or places, any goods which, by this or any other act relating to the revenue of customs, are liable to forfeiture, upon being imported into, exported from, or carried coastwise into the said islands respectively, then and in such case the said vessel or boat, with all her guns, furniture, ammunition, tackle, and apparel, and all such goods as aforesaid with their packages, and any other goods which may be contained therein, shall be forfeited."

Vessels sailing from Guernsey, Jersey, Alderney, Sark, or Man, with a greater number of men than allowed, or taking on board small cordage or other articles, forfeited.

§ 10. "If any vessel or boat, belonging wholly or in part to H.M.'s subjects, or whereof half the persons on board are subjects of H. M., shall sail from *Guernsey*, *Jersey*, *Alderney*, *Sark*, or *Man*, navigated by a greater number of persons than is allowed by this act (as herein-after mentioned), in a vessel or boat of like size and description; or if any vessel or boat shall sail from any of the said islands, having on board, or which shall take or have taken on board during the voyage, any small cordage adapted for slinging small casks, or any more ankers, half ankers, or other small casks, or any tin or other cases, or bladders of less content than forty gallons, and capable of containing fluids, of the sort used for smuggling spirits, than shall be necessary for the use of such ves-



6 G. 4. c. 108.

Vessels departing from Guernsey, &c. having on board spirits, wine, &c. breaking bulk or unlading cargo, &c. forfeited.

§ 12. "If after the departure from *Guernsey*, *Jersey*, *Alderney*, or *Sark* respectively, of any vessel or boat belonging wholly or in part to H. M.'s subjects, or whereof half the persons on board are H. M.'s subjects, having on board any spirits, tobacco, snuff, tea, or wine, bulk be broken, or any of the cargo unladen or unshipped, or any alteration be made in the form, size, description, or number of the packages shipped, or in the quantity, quality, or mode of package of the goods therein, at any time in the prosecution of the voyage towards the U. K. or any other place for which the vessel or boat shall have cleared out, such vessel or boat, with her tackle and furniture, shall be forfeited; but no forfeiture shall be incurred for breaking bulk or unlading the cargo, or any part of it, through unavoidable necessity and distress, nor for any alteration in the cargo, if occasioned by necessity or accident, or made for the preservation and safety of the vessel or boat, such necessity or accident to be proved to the satisfaction of the commissioners of H. M.'s customs."

Vessels found within the limits of a port with a cargo, and afterwards found light and unaccounted for, to be forfeited.

§ 13. "If any vessel or boat whatever shall be found within the limits of any port of the U. K. with a cargo on board, and such vessel shall afterwards be found light or in ballast, and the master is unable to give a due account of the port or place within the U. K. where such vessel shall have legally discharged her cargo, such vessel or boat, with her guns, furniture, ammunition, tackle, and apparel, shall be forfeited."

Vessels liable to seizure, not bringing to during chase, may be fired at.

§ 14. "In case any vessel or boat, liable to seizure or examination under any act or law for the prevention of smuggling, shall not bring to on being required so to do, on being chased by any vessel in H. M.'s navy, having the proper pendant ensign of H. M.'s ships hoisted, or by any vessel employed for the prevention of smuggling under the authority of the lords commissioners of the admiralty or the commissioners of H. M.'s customs, having a pendant and ensign hoisted, of such description as H. M. by any order in council, or by his royal proclamation under the great seal of the U. K., shall have ordered and directed, or shall from time to time in that behalf order and direct, it shall be lawful for the captain, master, or other person having the charge or command of such vessel in H. M.'s navy, or employed as aforesaid (first causing a gun to be fired as a signal), to fire at or into such vessel or boat; and such captain, master, or other person acting in his aid or assistance, or by his direction, shall be and he is hereby indemnified and discharged from any indictment, penalty, or action for damages for so doing; and in case any person or persons shall be wounded, maimed, or killed by any such firing, and the said captain, master, or other person, and any person acting in his or their aid or assistance, or by his or their direction, shall be sued, molested, or prosecuted, or shall be brought before any of H. M.'s justices of the peace or other justices, or persons having competent authority, for or on account of such firing, wounding, maiming, or killing as aforesaid, all and every such justice or justices, person or persons, is and are hereby authorised and empowered, enjoined and required, to admit every such captain, master, or other person or persons so brought before him or them as aforesaid to bail; any law, usage, or custom to the contrary notwithstanding."

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§ 15. "If any person or persons shall, from and after the passing of this act, wear, carry, or hoist in or on board any ship, vessel, or boat whatever belonging to any of H. M.'s subjects, whether the same be merchant or otherwise, without particular warrant for so doing from H. M. or his high admiral of *Great Britain*, or the commissioners for executing the office of high admiral of *Great Britain*, H. M.'s jack commonly called the union jack, or any pendant ensign, or colours usually worn by H. M.'s ships, or any flag, jack, pendant, ensign, or colours resembling those of H. M., or those used on board H. M.'s ships, or any other ensign or colours than the ensign or colours by any proclamation of H. M. now in force or hereafter to be issued prescribed to be worn, then and in every such case the master or other person having the charge or command thereof, or the owner or owners being on board the same, and every other person so offending, shall forfeit and pay the sum

enalty, 50*l.*

of 50*l.*, which shall and may be recovered with costs of suit either in the high court of admiralty of *England*, or in any of H. M.'s courts of king's bench or exchequer at *Westminster* or *Dublin*, or in the courts of session or exchequer in *Scotland* respectively, or before any two or more justices of the peace; and that it shall be lawful for any officer of H. M.'s navy, customs, or excise, to enter on board any such ship, vessel, or boat, and to seize and take away any such prohibited flag, jack, pendant, ensign, or colours, and the same shall thereupon become forfeited to H. M.'s use."

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§ 16. "All vessels and boats made use of in the removal, carriage, or conveyance of any goods liable to forfeiture under this or any other act relating to the revenue of customs, shall be forfeited."

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§ 17. "The owner of every vessel belonging in the whole or in part to any of H. M.'s subjects, shall paint or cause to be painted upon the outside of the stern of every boat belonging to such vessel, the name of such vessel, and the port or place



prohibited to be imported into the U. K., found concealed on board any vessel or boat, or in any of the packages of goods on board, or in or underneath the ballast, or in any other place on board such vessel or boat, shall be forfeited. 6 G. 4. c. 108.

Goods found concealed on board forfeited. 7 G. 4. c. 48.

By stat. 7 *G.* 4. *c.* 48. § 14. "In case any vessel shall on account of any goods become liable to forfeiture under the said act for the prevention of smuggling, the goods creating such forfeiture shall also be forfeited."

§ 15. Reciting that by the said act for the prevention of smuggling, "if any foreign vessel shall, in certain cases therein described, be found within one league of the coast of the U. K., such vessel shall be forfeited;" it is enacted, "that the like forfeiture shall, in similar cases, attach equally to any foreign boat, as fully and effectually as if in the said act such forfeiture had been made to attach to any foreign vessel or boat."

Foreign boat within one league forfeited as foreign vessel would be.

§ 16. "If any vessel or boat whatever shall arrive or shall be found or discovered to have been within any port, harbour, river, or creek of the U. K., not being driven therein by stress of weather or other unavoidable accident, having on board, or in any manner attached or affixed thereto, or having had on board, or in any manner attached or affixed thereto, or conveying or having conveyed in any manner, within any such port, harbour, river, or creek, any brandy or other spirits, except rum, in any cask or package of less size or content than forty gallons, except only for the use of the seamen then belonging to and on board such vessel or boat, not exceeding two gallons for each seaman, or any tobacco or snuff in any cask or package in which such tobacco or snuff could not be legally imported into the U. K. in such vessel, (except loose tobacco for the use of the seamen, not exceeding five pounds weight for each seaman,) every such vessel or boat, together with such spirits or tobacco, shall be forfeited; and every person found or discovered to have been on board such vessel or boat, at the time of her becoming so liable to forfeiture, and knowing such spirits or tobacco to be or to have been on board, or attached to such vessel or boat, shall forfeit the sum of 100*l.*, and shall be liable to detention and prosecution, and to be dealt with in the manner directed by the said act for the prevention of smuggling, in cases of persons found or discovered to have been on board vessels liable to forfeiture under that act: Provided always, that if it shall be made appear by proof on oath, to the satisfaction of the commissioners of H. M.'s customs, that the said spirits or tobacco were on board without the knowledge or privity of the owner or master of such vessel or boat, and without any wilful neglect or want of reasonable care on their or either of their behalfs, that then and in such case the vessel or boat shall not be liable to forfeiture, although the persons concerned in placing the said spirits or tobacco on board, or knowing thereof, shall be liable to detention and prosecution as aforesaid."

Vessels or boats arriving in port with spirits or tobacco in small packages forfeited, and persons found on board knowing thereof, to forfeit 100*l.*

By stat. 7 & 8 *G.* 4. *c.* 56. § 9. Reciting that "by the act for the prevention of smuggling, foreign vessels laden with spirits in casks of less content than forty gallons, or with certain other goods, in which there shall be a certain proportion of *British* subjects, are liable to seizure if found within certain distances of the coast; and that it frequently happens, *that during chace*, and previously to

7 & 8 G. 4. c. 56. Persons escaping from foreign vessels in chase to be deemed British subjects.

7 & 8 G. 4. c. 56. such vessels being taken possession of, certain persons, who are believed to be *British* subjects, but of which there is no legal proof, quit such vessels, leaving only foreigners on board, by which the law is evaded, and the vessels and cargoes escape confiscation, although the cargoes may be evidently intended to be smuggled into the U. K.;" it is enacted, "that in all such cases where any person shall escape from any such vessel or boat before possession is taken of it, every such person so escaping shall be deemed to be a subject of H. M., within the meaning of the said last-mentioned act, unless it shall be proved to the contrary."

Of Licences.

6 G. 4. c. 108. Vessels not square-rigged forfeited, unless licensed. (a)

By 6 *G.* 4. *c.* 108. § 20. "All vessels belonging in the whole or in part to H. M.'s subjects (unless square-rigged); and all vessels whatsoever belonging as aforesaid, the length of which shall be greater than in the proportion of three feet to one foot in breadth; and all vessels belonging as aforesaid armed for resistance (otherwise than is hereinafter provided); and all boats whatsoever belonging as aforesaid, which shall be found within any of the limits or distances as aforesaid; shall be forfeited, unless the owners thereof shall have obtained a licence for navigating the same from the commissioners of H. M.'s customs, as is hereinafter directed."

Vessels to be navigated with a certain number of men, if exceeding specified number, and found within certain distances, forfeited, unless licensed.

§ 21. "No vessel or boat belonging in the whole or in part to H. M.'s subjects, or whereof one half of the persons on board shall be subjects of H. M., (not being a lugger, and at the time fitted and rigged as such,) shall be navigated by a greater number of men (officers and boys included) than in the following proportions; that is to say, if of thirty tons or under, and above five tons, four men; if of sixty tons or under, and above thirty tons, five men; if of eighty tons or under, and above sixty tons, six men; if of one hundred tons or under, and above eighty tons, seven men; and above that tonnage, one man for every fifteen tons of such additional tonnage; or if a lugger, in the following proportions; that



or post-office, nor any whale-boat or boat solely employed in the fisheries, or any boat belonging to any square-rigged vessel in the merchant service, nor any life-boat or tow-boat used in towing vessels belonging to licensed pilots, nor to any boat used solely in rivers or inland navigation, on account of such ship, vessel, boat, or lugger not being licensed as aforesaid." 6 G. 4. c. 108.

§ 23. "Every licence granted by the commissioners of H. M.'s customs, for any vessel requiring licence under this act, shall contain the proper description of such vessel, the name or names of the owner or owners, with his or their place or places of abode, and the manner and the limits in which the same is to be employed, and if armed, the numbers and description of arms, and the quantity of ammunition, together with any other particulars which the said commissioners may require and direct." Licence to contain certain particulars.

§ 24. "Before such licence shall be issued or delivered, or shall have effect for the use of any vessel, the owner or owners thereof shall give or cause to be given security by bond of two or more sufficient persons (being housekeepers), in treble the value of such vessel (not exceeding in any case the sum of 3000*l.* for a square-rigged vessel), with condition as follows; that is to say, that the vessel shall not be employed in the importation, landing, or removing of any prohibited or uncustomable goods, contrary to the true intent and meaning of this act, or any other act relating to the revenues of customs or excise, nor in the exportation of any goods which are or may be prohibited to be exported, nor in the re-landing of any goods contrary to law, nor shall receive or take on board, or be found at sea or in port with any goods subject to forfeiture, nor shall do any act contrary to this act, or any act hereafter to be made relating to the revenues of customs or excise, or for the protection of the trade and commerce of the U. K., nor shall be employed otherwise than mentioned in the licence, and within the limits therein mentioned; and in case of loss, breaking-up, or disposal of the vessel, that the licence shall be delivered within six months from the date of such loss, breaking-up, or disposal of such vessel, to the collector or principal officer at the port to which such vessel shall belong." Before licence granted to a ship, owners to give security by bond in certain conditions. (a)

§ 25. "Such bond shall be given at the port to which such vessel shall belong, and at no other without the consent of the commissioners of H. M.'s customs first obtained; and the persons who are to become such security shall be persons, whether owners or not, approved by the collector and comptroller of the port where such bond is given, and residing at or near such port; and the collector and comptroller shall certify upon such licence before they issue the same, that the security required by law has been given in respect of such licence." Licence bond to be given at the port to which the vessel belongs.

§ 26. "Every licence granted by the commissioners of H. M.'s customs, for any boat requiring licence under this act, shall contain the description of the boat, with the name or names of the owner or owners thereof, and his or their place or places of abode, and the manner and limits in which such boat is to be used, together with any other particulars which the said commissioners may require and direct; and that the owner or owners of the said boat shall give his or their own security by bond, in treble the value thereof, with the like condition as is herein-before required Licence for boat to contain certain particulars.

(a) *But see 7 G. 4. c. 48. § 12. post.*

G. 4. c. 108.

on licences being granted for vessels under this act; and that such bond shall not be liable to any stamp duty."

Commissioners may restrict licences and require fresh security.

§ 27. "It shall be lawful for the said commissioners of H. M.'s customs to restrict the granting of a licence for any vessel or boat, in any way that they may deem expedient for the security of the revenue; and in case the said commissioners shall have granted a licence for any vessel, and shall deem it necessary to require fresh security for any vessel which may have been licensed as aforesaid, they are hereby empowered so to do, by an order in writing to that effect under their hands; and a copy of such order shall be left either with the owner or owners of such vessel, or with the person in whose custody the same shall then be; and from and after the delivery of such order as aforesaid, the licence granted for such vessel shall be deemed to be null and void, and the owner or owners is and are required to deliver up the said licence to the collector of the customs at the port to which such vessel or boat shall belong, within three months from the day when such order shall be delivered as aforesaid; and in default of such delivery, the owner or owners shall forfeit the sum of 100*l.*; and if any vessel or boat requiring such licence as aforesaid shall be found without such licence, or shall be found or discovered to have been used or employed in any trade or in any limits other than such as shall be specified in such licence, that then and in such case the said vessel or boat, with all her guns, furniture, ammunition, tackle, and apparel, and all the goods laden on board, shall be forfeited."

Revoked licence to be delivered up, on penalty of 100*l.*

Forfeiture of ship or vessel without such licence.

Licences to be taken to the collector at the port from whence vessels, &c. about to sail, to be registered, and to

§ 28. "The owner of every vessel or boat which shall be licensed as aforesaid shall, before such vessel or boat, after obtaining such licence, first proceeds to sea, or departs out of any port of the U. K. or *Isle of Man*, bring or cause to be brought such licence to the collector or other proper officer at the port from whence such vessel or boat is about to depart, and the said collector or other proper officer is hereby required duly to register the same;



long, such vessel or boat shall not be liable to forfeiture on account of not being licensed." 6 G.4. c.108.

§ 30. "If any person or persons shall counterfeit, erase, alter, or falsify, or cause to be counterfeited, erased, altered, or falsified, any licence so to be granted as aforesaid, or shall knowingly or wilfully make use of any licence so counterfeited, erased, altered, or falsified, such person or persons shall for every such offence forfeit the sum of 500*l.*" Persons counterfeiting licences to forfeit 500*l.*

§ 31. "Whenever any licensed vessel or boat shall be lost, broken up, captured, burnt, seized, and condemned, sold, or otherwise disposed of, the licence shall be delivered up to the collector or other proper officer of the customs at the port to which such vessel or boat belongs, within six calendar months from the time thereof; or in case of the licence being lost or taken by the enemy, satisfactory proof thereof, on oath, shall be made within the same period, before the collector or other chief officer of such port; and in default thereof the owner or owners, and the master of such vessel or boat, shall forfeit the sum of 100*l.*" Upon licensed vessel being lost, or broken up, &c. licence to be delivered up, or if licence lost, proof to be within six months made, under penalty of 100*l.*

By 7 *G.* 4. *c.* 48. § 12. "No licence (except a licence for arming) shall be required for any ship or vessel which is of the burthen of two hundred tons or upwards, nor for any square-rigged ship or vessel, or any ship, vessel, or boat propelled by steam, which is not of greater length than in the proportion of three feet six inches to one foot of breadth; and that no greater or other security shall be required on account of any licence to be issued under the said act, than in the sum of 1000*l.*, or in the single value of the vessel or boat for which such licence is to be issued, if such value be less than 1000*l.* and by the sole bond of such owner or owners of such vessel or boat: Provided always, that if any such bond shall be taken of the owner of any boat who shall not have attained the age of twenty-one years, such bond shall nevertheless be valid and effectual to all intents and purposes; any thing in any act, or in any law, custom, or usage to the contrary notwithstanding." 7 G.4. c. 48. Licences, for what vessels required. Licence bond. Minors being owners of boats.

§ 13. "No bond given on account of the licence of any vessel or boat, under the said act for the prevention of smuggling, shall be cancelled until the space of twelve months after the licence for which such bond had been entered into shall have been delivered up to the proper officer of the customs; and such bond shall remain in full force and effect for the time of twelve months after the delivering of the licence as aforesaid, unless fresh security shall be given for such vessel or boat." Licence bond not to be cancelled for 12 months.

Of Vessels and Goods.

By 6 *G.* 4. *c.* 108. § 32. "If any goods liable to the payment of duties shall be unshipped from any vessel or boat (customs and other duties not being first paid or secured), or if any prohibited goods whatsoever shall be imported into any part of the U. K.; or if any goods whatsoever, which shall have been imported, warehoused, or otherwise secured in the U. K., either for home consumption or exportation, shall be clandestinely or illegally removed from or out of any warehouse or place of security; that then and in such case all such goods as aforesaid shall be forfeited, 6 G.4. c.108. Uncustomed or prohibited goods unshipped or removed illegally, &c. forfeited. (*a*)

(*a*) *But see 7 & 8 G. 4. c. 56. § 5. 12 & 13. post.*

5 G. 4. c. 108.

together with all horses and other animals, and all carriages and other things made use of in the removal of such goods.

Goods prohibited to be exported, shipped or brought to the quay, forfeited, with goods packed therewith.

§ 33. "If any goods which are or may be prohibited to be exported, shall be put on board any vessel or boat with intent to be laden or shipped for exportation, or shall be brought to any quay, wharf, or other place in the U. K., in order to be put on board any vessel or boat, for the purpose of being exported: or if any goods which are prohibited to be exported, shall be found in any package produced to the officers of the customs, as containing goods not so prohibited, that then and in such case not only all such prohibited goods, but also all other goods packed therewith, shall be forfeited."

Goods liable to forfeiture may be seized by officers of army, &c. (a)

§ 34. "All vessels and boats, and all goods whatsoever liable to forfeiture, under this or any other act relating to the revenue of customs, shall and may be seized in any place either upon land or water, by any officer or officers of his majesty's army (a), navy, or marines, duly authorised and on full pay, or officers of customs or excise, or any person having authority to seize from the commissioners of H. M.'s customs or excise; and all vessels, boats, and goods so seized shall, as soon as conveniently may be, be delivered into the care of the proper officer appointed to receive the same."

Officers making collusive seizures, or taking bribes, and persons offering same, to forfeit 500*l*.

§ 35. "If any officer of the customs, or any officer of the army, navy, or marines, duly authorised and on full pay, and any other person or persons whatsoever, employed by or under the direction of the commissioners of the customs, shall make any collusive seizure, or deliver up, or make any agreement to deliver up, or not to seize any vessel or boat, or any goods liable to forfeiture, or shall take any bribe, gratuity, recompence, or reward for the neglect or non-performance of his duty, every such officer or other person shall forfeit for every such offence the sum of 500*l*., and be rendered incapable of serving his majesty in any office whatever, either civil or military; and every person who



or remaining on board, or in entering or searching such vessel or person, every such person shall forfeit and lose the sum of 100*l.*"

Penalty on obstruction, 100*l.*

§ 37. "Before any person shall be searched by any such officer as aforesaid, it shall be lawful for such person to require such officer to take him or her before any justice of the peace, or before the collector, comptroller, or other superior officer of customs, who shall determine whether there is reasonable grounds to suppose that such person has any uncustomed or prohibited goods about his or her person; and if it shall appear to such justice, collector, comptroller, or other superior officer of customs, that there is reasonable ground to suppose that such person has any uncustomed or prohibited goods about his or her person, that then such justice, collector, comptroller, or other superior officer of customs shall direct such person to be searched in such manner as he shall think fit; but if it shall appear to such justice, collector, comptroller, or other superior officer of customs, that there is not reasonable ground to suppose that such person has any uncustomed or prohibited goods about his or her person, that then such justice, collector, comptroller, or other superior officer of customs, shall forthwith discharge such person, who shall not in such case be liable to be searched; and every such officer as aforesaid is hereby authorised and required to take such person, upon demand, before any such justice, collector, comptroller, or other superior officer of customs, detaining him or her in the meantime: Provided always, that no person, being a female, so directed to be searched, shall be searched by any other person than a female, duly authorised for that purpose by the commissioners of his majesty's customs."

Officers, before searching persons, to take them before a justice, collector, or comptroller of customs, if required, who may direct the search, or discharge such persons.

§ 38. "If any such officer shall not take such person with reasonable despatch before such justice, collector, comptroller, or other superior officer of customs, when so required, or shall require any person to be searched by him, not having reasonable ground to suppose that such person has any uncustomed or prohibited goods about his or her person, that such officer shall forfeit and pay the sum of 10*l.*"

Penalty on officer not taking suspected persons before magistrate with dispatch, or requiring to search without reasonable ground.

§ 39. "If any passenger or other person on board any vessel or boat shall, upon being questioned by any officer of H. M.'s customs, whether he has any foreign goods upon his person, or in his possession, deny the same, and any such goods shall, after such denial, be discovered upon his person, or in his possession, such goods shall be forfeited, and such person shall forfeit treble the value of such goods."

Passengers having goods in possession, and denying it, to forfeit treble the value thereof.

§ 40. "It shall and may be lawful for any officer of customs, or person acting under the direction of the commissioners of H. M.'s customs, authorised by writ of assistance under the seal of H. M.'s court of exchequer, to take a constable, headborough, or other public officer inhabiting near the place, and in the daytime, to enter into any house, shop, cellar, warehouse, room, or other place, and in case of resistance to break open doors, chests, trunks, and other packages, there to seize and from thence to bring any uncustomed or prohibited goods, and to put and secure the same in the custom-house warehouse in the port next to the place from whence such goods shall be so taken as aforesaid: Provided always, that for the *purposes of this* act, any such con-

Officers, with writs of assistance, may enter houses to search for uncustomed or prohibited goods.

G. 4. c. 108.

stable, headborough, or other public officer duly sworn as such, may act as well without the limits of any parish, ville, or other place for which he shall be so sworn, as within such limits."

Writs of assistance to be in force during king's reign, and for six months afterwards.

§ 41. "All writs of assistance so issued from the court of exchequer as aforesaid, shall continue and be in force during the whole of the reign in which such writs shall have been granted, and for six months from the conclusion of such reign."

Police officers seizing goods to carry them to the custom-house warehouse.

§ 42. "If any goods subject or liable to forfeiture under this or any other act relating to the revenue of customs, shall be stopped or taken by any police officer, or other person acting by virtue of any act of parliament, or otherwise duly authorised, such goods shall be carried to the custom-house warehouse next to the place where the goods were stopped or taken, and there delivered to the proper officer appointed to receive the same, within forty-eight hours after the said goods were stopped and taken."

Goods stopped by police officers may be detained until trial of persons charged with stealing them.

§ 43. "If any such goods shall be stopped or taken by such police-officer, on suspicion that the same have been feloniously stolen, it shall be lawful for the said officer to carry the same to the police-office to which the offender is taken, there to remain until and in order to be produced at the trial of the said offender; and in such case the officer is required to give notice in writing to the commissioners of H. M.'s customs, of his having so detained the said goods, with the particulars of the same, and immediately after the trial, all such goods are to be conveyed and deposited in the custom-house warehouse as aforesaid, to be proceeded against according to law; and in case any police-officer making detention of any such goods, shall neglect to convey the same to such warehouse, or to give the notice of having stopped the same as before described, such officer shall forfeit the sum of 20*l*."

Commissioners of treasury or commissioners of customs may restore seized

§ 44. "It shall and may be lawful for the commissioners of H. M.'s treasury of the U. K. of *G. B.* and *Ireland*, or any three or more of them for the time being, or the commissioners of H. M.'s customs, by any order made for that purpose under their hands, to direct any vessel, boat, goods, or commodities whatever

commissioners of the customs or excise, and such officer or officers shall be deemed to be duly authorised for the purposes of this act or any other act relating to the revenue of customs; any thing in this or any other act to the contrary notwithstanding." 6 G. 4. c. 108. the prevention of smuggling.

By 7 & 8 *G.* 4. *c.* 56. § 5. "All spirits or tobacco which shall be found being removed or carried without a legal permit for the same, shall be deemed to be spirits or tobacco respectively unshipped without payment of duty, unless the party in whose possession the same shall be found or seized shall prove to the contrary." 7 & 8 G. 4. c. 56. Spirits or tobacco, removing without a permit, to be deemed unshipped without payment of duties.

§ 12. "If any goods which are subject to any duty or restriction in respect of importation shall be found on examination of any package to be concealed in double sides or false bottoms, or in any other secret or disguised place in such package, or among any other things in such package, that then and in such case not only *all* such goods, but also all other goods found in the said package, shall be forfeited." Goods found concealed in double sides, or false bottoms.

§ 13. "It shall and may be lawful for the commissioners of H. M.'s treasury, or any three or more of them, by an order made for that purpose under their hands, to direct any vessel, boat, or goods seized under any act made for the prevention of smuggling, or relating to the revenue of customs or excise, or to the trade or navigation of the united kingdom, or of any of H. M.'s possessions abroad, to be delivered to the owner or owners, whether the same shall have been seized in the U. K. or abroad, and whether condemnation has taken place or not, upon such conditions as they may deem expedient, and which shall be mentioned in the said order; any thing in any law to the contrary notwithstanding." Treasury may restore seizures.

§ 15. "And for the purpose of enabling the mayor and commonalty and citizens of the city of *London*, and their successors, to ascertain and collect the amount of the dues payable to them upon the several articles herein-after mentioned, imported coastwise into the port of *London*; be it enacted, that if all or any of the goods of the description hereinafter mentioned, (that is to say,) firkins of butter, tons of cheese, fish, eggs, salt, fruit, roots eatable, and onions, brought coastwise into the port of the said city, and which are liable to the said dues, shall be landed or unshipped at or in the said port, before a proper certificate of the payment of the said dues shall have been obtained, such goods shall be forfeited, and may be seized by any officer of H. M.'s customs empowered to seize any goods landed without due entry thereof; and such forfeiture may be sued for, prosecuted, and recovered by action of debt, bill, plaint, or information, in any of H. M.'s courts of record at *Westminster*, in the name of the chamberlain of the said city, on behalf of the said mayor and commonalty and citizens." For obtaining dues payable on certain goods brought coastwise.

Of Penalties.

By 6 *G.* 4. *c.* 108. § 45. "Every person not arrested and detained as herein-after mentioned, who shall, either in the U. K. or the *Isle of Man*, assist or be otherwise concerned in the unshipping of any goods which are prohibited, or the duties for which have not been paid or secured, or who shall knowingly harbour, keep, or conceal, or shall knowingly permit or suffer to be harboured, kept, 6 G. 4. c. 108. Penalty on persons unshipping, harbouring, or having custody of any prohibited or

6 G. 4. c. 108.

Uncustomed goods.

or concealed, any goods which have been illegally unshipped without payment of duties, or which have been illegally removed without payment of the same, from any warehouse or place of security in which they may have been originally deposited, or shall knowingly harbour, keep, or conceal, or permit or suffer to be harboured, kept, or concealed, any goods prohibited to be imported, or to be used or consumed in the U. K. or in the *Isle of Man*; and every person, either in the U. K. or the *Isle of Man*, to whose hands and possession any such uncustomed or prohibited goods shall knowingly come, shall forfeit either the *treble value* (*a*) thereof, or the penalty of 100*l.* at the election of the commissioners of H. M.'s customs."

Penalty on persons unshipping, having possession, or harbouring drawback or bounty goods.

§ 46. "If any goods, upon which there is a drawback or bounty, shall be shipped to be exported into parts beyond the seas, and shall afterwards be unshipped with intention to be relanded in the U. K. (unless, in case of distress, to save the goods from perishing) that then and in such case the said goods shall be forfeited, and the master of the vessel from which they shall be unshipped, and every person concerned in the unshipping, and the person or persons to whose hands the same shall knowingly come, or who shall knowingly harbour, keep, or conceal, or suffer to be harboured, kept, or concealed such goods, shall for every such offence forfeit the treble value of the goods, or the penalty of 100*l.* at the election of the commissioners of H. M.'s customs."

Persons insuring the delivery of prohibited or uncustomed goods to forfeit 500*l.*

§ 47. "Every person who, by way of insurance or otherwise, shall undertake or agree to deliver any goods to be imported from beyond the seas, at any port or place in the U. K. without paying the duties due on such importation, or any prohibited goods, or in pursuance of such insurance, or otherwise, shall deliver or cause to be delivered any uncustomed or prohibited goods, every such person, and every aider or abettor thereof, shall for such offence forfeit the sum of 500*l.* over and above any other penalty to which by law he may be liable; and every person who shall agree to pay any money for the insurance or conveyance of such goods, or shall

veyed in any manner such goods or other things as subject such vessel or boat to forfeiture, or who shall be found or discovered to have been on board any vessel or boat, from which any part of the cargo shall have been thrown overboard during chace, or staved or destroyed, shall forfeit the sum of 100*l.*; and that every person, not being a subject of H. M., who shall be found or discovered to have been on board any vessel or boat, liable to forfeiture for any of the causes aforesaid, within one league of the coast of the U. K. or of the *Isle of Man*, or within any bay, harbour, river, or creek of the said island, shall forfeit for such offence the sum of 100*l.*; and it shall be lawful for any officer or officers of the army, navy, or marines, being duly authorised, and on full pay, or any officer of customs or excise, or other person acting in his or their aid or assistance, or duly employed for the prevention of smuggling, and he and they is and are hereby authorised, empowered, and required to stop, arrest, and detain every such person, and to carry and convey such person before two or more justices of the peace in the U. K., or a governor, deputy governor, or deemster in the *Isle of Man*, to be dealt with as hereinafter directed: Provided always, that any such person proving, to the satisfaction of such justices, governor, deputy governor, or deemster, that he was only a passenger in such vessel or boat, and had no interest whatever either in the vessel or boat, or in the cargo on board the same, shall be forthwith discharged by such justices." 6 G. 4. c. 108. nalty of 100*l.*, and may be detained.

§ 50. "Every person whatsoever, who shall unship, or be aiding, assisting, or concerned in the unshipping of any spirits or tobacco, liable to forfeiture under this or any other act relating to the revenue of customs or excise, either in the U. K. or the *Isle of Man*, or who shall carry, convey, or conceal, or be aiding, assisting, or concerned in the carrying, conveying, or concealing of any such spirits or tobacco, shall forfeit for such offence the sum of 100*l.* and every such person may be detained by any officer or officers of H. M.'s army, navy, or marines, being duly authorised and on full pay, or any officer of customs or excise, or other person acting in his or their aid or assistance, or duly employed for the prevention of smuggling, and taken before two justices of the peace in the U. K. or a governor, deputy governor, or deemster in the *Isle of Man*, to be dealt with as hereinafter directed." Persons unshipping or concerned in the carrying away or concealing spirits or tobacco, to forfeit 100*l.* and may be detained. (*a*)

§ 51. "If any person or persons liable to be arrested and detained, under the provisions of this or any other act relating to the revenue of customs, shall not be detained at the time of so committing the offence for which he or they is or are so liable, or after detention shall make his or their escape, it shall and may be lawful for any officer of the army, navy, or marines, being duly authorised and on full pay, or any officer of customs or excise, or any other person acting in his or their aid or assistance, or duly employed under such officer, to stop, arrest, and detain such person so liable to detention as aforesaid, at any time afterwards, and to carry him before two justices of the peace, to be dealt with as if detained at the time of committing the said offence." Persons liable to be arrested, and making escape, may afterwards be detained by any officer of the customs, &c.

§ 52 "No person shall, after sunset and before sunrise, between the twenty-first day of *September* and the first day of *April*, or after the hour of eight in the evening and before the hour of six in Penalty on persons making signals to smug-

(*a*) *See 7 & 8 G. 4. c. 56. § 5. post.*

G. 4. c. 108.

ling vessels at sea. (a)

the morning at any other time in the year, make, aid, or assist in making, or be present for the purpose of aiding or assisting in the making of any light, fire, flash, or blaze, or any signal by smoke, or by any rocket, fireworks, flags, firing of any gun or other fire arms, or any other contrivance or device, or any other signal in or on board or from any vessel or boat, or on or from any part of the coast or shore of the U. K., or within six miles of any part of such coasts or shores, for the purpose of making or giving any signal to any person on board any smuggling vessel or boat, whether any person so on board of such vessel or boat be or be not within distance to see or hear any such light, fire, flash, blaze, or signal; and if any person, contrary to the true intent and meaning of this act, make or cause to be made, or aid or assist in making any such light, fire, flash, blaze, or signal, such person so offending shall be guilty of a misdemeanor; and it shall be lawful for any person to stop, arrest, and detain the person or persons who shall so make, or aid or assist in the making, or who shall be present for the purpose of aiding or assisting in making, any such light, fire, flash, blaze, or signal, and to carry and convey such person or persons so offending before any two or more of H. M.'s justices of the peace residing near the place where such offence shall be committed, who, if they see cause, shall commit the offender to the next county gaol, there to remain until the next court of oyer or terminer, great session or gaol delivery, or until such person or persons shall be delivered by due course of law, and it shall not be necessary to prove, on any indictment or information, that any vessel or boat was actually on the coast; and the offender or offenders being duly convicted thereof, shall by order of the court before whom such offender or offenders shall be convicted, either forfeit and pay the penalty or forfeiture of 100*l.* or, at the discretion of such court, be sentenced or committed to the common gaol or house of correction, there to be kept to hard labour for any term not exceeding one year."



ployed for the prevention of smuggling, or shall rescue or cause to be rescued any goods which have been seized, or shall attempt or endeavour to do so, or shall before, or at or after any seizure stave, break, or otherwise destroy any goods, to prevent the seizure thereof, or the securing the same, then and in such case the parties offending shall forfeit for every such offence the sum of 200*l.*" 6 G.4. c.108.

By 7 *G.*4. *c.*48. § 19. "Every intimation to any smuggling vessel or boat in whatever manner given, shall be deemed to be a signal within the meaning of the said act for the prevention of smuggling, and shall subject the person giving such intimation to be detained and proceeded against as directed by the said act." 7 G.4. c.48. Signals to smuggling vessels.

By 7 & 8 *G.*4. *c.*56. § 5. "All spirits or tobacco which shall be found being removed or carried without a legal permit for the same, shall be deemed to be spirits or tobacco respectively unshipped without payment of duty, unless the party in whose possession the same shall be found or seized shall prove to the contrary." 7&8G.4. c.56. Spirits or tobacco, removing without a permit, to be deemed unshipped without payment of duties.

§ 6. "In all cases where any penalty, the amount of which is at any time to be determined by the value of any goods, is directed to be sued for under any law now in force or hereafter to be made for the prevention of smuggling, or relating to the revenue of customs or excise, such value shall be deemed and taken to be according to the rate and price which goods of the like sort or denomination, and of the best quality, bear at such time in *London*, and upon which the duties due upon importation have been paid." How value of goods for penalties is to be ascertained.

§ 11. "All penalties and forfeitures which may be recovered before any justices of the peace under any act for the prevention of smuggling, or relating to the revenue of customs or excise, on any prosecution by order of the commissioners of customs, shall be paid to the commissioners of H.M.'s customs, and on any prosecution by order of the commissioners of excise shall be paid to the commissioners of H.M.'s excise, or to the person appointed by them respectively to receive the same; and such penalties and forfeitures shall be applied by the said commissioners respectively in such manner as the law directs." Penalties recovered before justices, to be paid to commissioners of the customs or excise.

Of Felonies.

By 6 *G.*4. *c.*108. § 56. "If any persons to the number of three or more, armed with fire arms or other offensive weapons, shall within the U.K., or within the limits of any port, harbour, or creek thereof, be assembled in order to be aiding and assisting in the illegal exportation of any goods prohibited to be exported, or in the carrying of such goods in order to such exportation, or in the illegal landing, running, or carrying away of prohibited or uncustomed goods, or goods liable to pay any duties which have not been paid or secured, or in the illegal carrying of any goods from any warehouse or other place, as shall have been deposited therein, for the security of the home consumption duties thereon, or for preventing the use or consumption thereof in the U.K., or in the illegal relanding of any goods which shall have been exported upon debenture or certificate, or in rescuing or taking away any such goods as aforesaid, after seizure, from the officer of the customs or other officer authorised to seize the same, or any person or persons *employed by them or assisting* them, or from 6 G.4. c.108. Three or more persons armed with fire-arms assembled to assist in the illegal exportation or landing of prohibited or uncustomed goods, or in the relanding goods shipped for exportation, or in the rescuing any such goods, to be deemed guilty of felony.

G.4. c.108.

the place where the same shall have been lodged by them, or in rescuing any person who shall have been apprehended for any of the offences made felony by this or any act relating to the revenue of customs, or in the preventing the apprehension of any person who shall have been guilty of such offence; or in case any persons to the number of three or more, so armed as aforesaid, shall, within this kingdom, or within the limits of any port, harbour, or creek thereof, be so aiding or assisting; every person so offending, and every person aiding, abetting, or assisting therein shall, being thereof convicted, be adjudged guilty of felony, and suffer death as a felon without benefit of clergy."

Persons shooting at any boat belonging to navy or in the service of the revenue, or shooting at or wounding officers of the army, navy, or marines, deemed guilty of felony.

§ 57. "If any person shall maliciously shoot at or upon any vessel or boat belonging to H. M.'s navy, or in the service of the revenue in any part of the *British* or *Irish* channels, or elsewhere on the high seas, within 100 leagues of any part of the coast of the U. K., or shall maliciously shoot at, maim, or dangerously wound any officer of the army, navy, or marines, being duly authorised and on full pay, or any officer of customs or excise, or any person acting in his aid or assistance, or duly employed for the prevention of smuggling, in the due execution of his office or duty, every person so offending, and every person, aiding, abetting, or assisting therein, shall, being lawfully convicted, be adjudged guilty of felony, and suffer death as a felon, without benefit of clergy." (*a*)

Any person in company with four others, found with goods liable to forfeiture, or in company with one other person carrying arms or disguised, to be

§ 58. "If any person, being in company with more than four other persons, be found with any goods liable to forfeiture under this or any other act relating to the revenue of customs or excise, or in company with one other person within five miles of any navigable river, carrying offensive arms or weapons, or disguised in any way, every such person shall be adjudged guilty of felony, and shall on conviction of such offence be transported as a felon for the space of seven years; and if such offender shall return into the U. K. before the expiration of the said seven years, he



§ 60. "It shall and may be lawful to and for the commanding officer for the time being of any vessel or boat employed for the prevention of smuggling to haul any such vessel or boat upon any part of the coasts of the U. K., or the shores, banks, or beaches of any river, creek, or inlet of the same, (not being a garden or pleasure-ground, or place ordinarily used for any bathing-machine or bathing-machines,) which shall be deemed most convenient for that purpose, and to moor any such vessel or boat on such part of the aforesaid coasts, shores, banks, and beaches below high-water mark, and over which the tide flows on ordinary occasions, and to continue such vessel or boat so moored as aforesaid, for such time as the said commanding officer shall deem necessary and proper; and such commanding officer, or person or persons acting under his direction, shall not be liable to any indictment, action, or suit for so doing; any law, statute, custom, or usage to the contrary notwithstanding." 6 G. 4. c. 108. Commanding officers of vessels in the service may haul their vessels on shore, without being liable to any action for so doing.

§ 61. "In all cases where any officer or seaman employed in the service of the customs or excise shall be killed, maimed, wounded, or in any way injured in the due execution of his office, or if any person acting in his aid shall be so killed, maimed, wounded, or in any way injured while so aiding such officer or seaman, it shall and may be lawful for the commissioners of H. M.'s customs and excise respectively to make such provision for the officer or person so maimed, wounded, or injured as aforesaid, or for the widows and families of such as shall be killed, as they shall be authorised and empowered to do by warrant from the lord high treasurer or commissioners of H. M.'s treasury for the time being." Officer, if wounded in the service of the customs, to be provided for, &c.

§ 62. "All vessels and boats, and all goods whatsoever, which shall have been seized and condemned for breach of any law relating to the revenue of customs, shall be disposed of as soon as conveniently may be after the condemnation thereof, in the following manner; (that is to say,) all goods of a description admissible to duty shall be sold by public auction to the best bidder, at a price not less than the duty upon the importation of the like sort of goods; and in case such goods will not fetch the duty, shall be put up to sale for exportation; and in case they do not sell for exportation, then the said goods shall be destroyed; and all prohibited goods shall be put up for sale for exportation to the best bidder, and in case they do not sell, then shall be destroyed; all vessels or boats calculated for the fair and mercantile trade of this kingdom shall be put up for sale to the best bidder; and all vessels or boats calculated for smuggling shall be broken up and destroyed, and the materials shall be put up to sale to the best bidder: Provided always, that if the commissioners of H. M.'s customs shall deem any of the vessels or boats necessary or required for the public service, it shall be lawful for them to cause the same to be used for the said purpose." Condemned vessels and goods how to be disposed of.

§ 63. "It shall and may be lawful for the commissioners of H. M.'s customs, and they are hereby authorised and empowered to award to any officer or other person detaining any person liable to detention under this or any other act relating to the revenue of customs, to be paid upon the conviction of such person, any reward they may think fit to direct, not exceeding the sum of 20*l.* for each person." Reward to officers for detaining smugglers.

§ 64. "It shall and *may be lawful* for the commissioners of Rewards to officers where pe-

3.4. c. 108, niary penal- s are reco- ed. ewards for zures.

H. M.'s customs, and they are hereby authorised and empowered to pay the following reward to any officer or officers, or persons as aforesaid, by whose means any pecuniary penalty or composition is recovered; (that is to say,) one-third of the penalty or sum recovered."

§ 65. "There shall be paid and allowed for and in respect of any seizure made by any officer or officers of the army, navy, or marines, duly authorised and on full pay, or any officer or officers of the customs or excise, or other person or persons deputed or employed by the commissioners of H. M.'s customs or excise, under this or any other act relating to the revenue of customs, the following rewards; (that is to say,)

In the case of Seizures of Spirits and Tobacco:

If all the parties are detained and carried before two justices of the peace, the whole:

If two or more, not being the whole, are detained and convicted, seven-eighths:

If one, being a seafaring-man, and convicted, three-fourths:

If one is detained with the vessel or means of conveyance, three-fourths:

If one person is detained and convicted, not a seafaring man, five-eighths:

If vessel or carriage with its lading be seized, without any person being detained, one-third:

If goods found sunk and concealed, and the smuggler afterwards convicted in consequence thereof, and by the exertions of the individuals so finding them, one-half:

If goods found, and no person subsequently convicted, one-eighth:

If goods seized and parties subsequently convicted in consequence of such seizure, and by the exertion of the seizors, one-half:

If goods seized only, one-eighth, or such other part as the com-



If taken into the public service or broken up, a moiety of appraised value. 6 G.4. c.108.

In the case of Seizures of Cattle and Carriages:

In all cases, three-fourths of the produce of the sale."

§ 66. "Provided always, that the aforesaid rewards shall be paid, subject to a deduction of 10*l. per centum* on account of law-charges and other expenses."

All rewards and seizures payable to officers of army, navy, or marines, to be regulated by H. M.'s orders in council, &c.

§ 67. "Every such reward, or part or share of any such seizure, or of the value thereof, as shall be payable to any officer or officers, non-commissioned officers, petty officers, seamen, or privates of H. M.'s army, navy, or marines, or acting under the orders of the lord high admiral or commissioners of the admiralty, shall be divided and distributed in such proportions, and according to such rules, regulations, and orders, as H. M. shall by his order or orders in council, or by his royal proclamation in that behalf, be pleased to direct and appoint."

Commissioners may distribute officers' shares of seizures in certain cases, so as to reward persons not actually present.

§ 68. "Reciting that it frequently happens that officers of the customs and excise, who from their stations on the coast, and other circumstances, are instrumental in causing the seizure of spirits and other goods, but who, from their not being actually present at and assisting in the making such seizure, have hitherto not been considered as entitled to participate in the officers' share of the same: and that it is expedient in order to provide for such cases, that the commissioners of H. M.'s customs and excise respectively should be authorised to direct distribution of the shares of all seizures made by officers or persons acting under their authority or direction, or of any penalties recovered or rewards paid for the apprehension of smugglers, in such manner as may appear to them to be most conducive to the protection of the revenue;" it is enacted, "that it shall be lawful for the commissioners of H. M.'s customs or excise respectively, and they are hereby authorised, in case of any seizure of vessels, boats, or goods, or the apprehension of any parties under this or any other act relating to the revenue of customs, to direct the distribution of the seizor's share of such vessels, boats, or goods, or of any penalties or rewards, so as to enable any officer or officers, or other person or persons acting under the authority of the said commissioners respectively, or through whose information or means such seizure shall have been made, or penalty recovered, or party apprehended, who shall not have been actually present at the making of the same, to participate in such proportions as the said commissioners shall respectively deem expedient."

Where officers act negligently or collusively, commissioners may direct the whole or any part of seizure to be applied to H. M.'s use.

§ 69. "Upon proof being made to the satisfaction of the commissioners of H. M.'s customs or excise, that any officer or officers, or person or persons as aforesaid, shall have acted collusively or negligently in the making of any seizure, it shall be lawful for the said commissioners to direct that the whole, or any part of the proportion of such seizure, be applied to the use of H. M."

Spirits floating on the sea not to be taken up but by officers.

§ 70. "Reciting that it hath frequently happened that spirits have been imported and brought into the ports of this kingdom in small casks, and that the persons importing and bringing the same have alleged that the same had been found floating upon or sunk in the sea; and there is reason to believe that great frauds have been practised with *regard to such spirits*, by the persons so im-

6.4. c. 108.

porting and bringing in the same, and so alleging as aforesaid; and it is therefore expedient, in order to prevent the like frauds in future, that persons not lawfully authorised to make seizure of such spirits should be restrained from intermeddling with or taking up any such spirits, being in casks of less content than forty gallons, which may be found floating upon or sunk in the sea;" it is enacted, "that no person or persons whatsoever, being a subject or subjects of H. M., his heirs and successors, other than an officer or officers of the navy, customs, or excise, or some person or persons authorised in that behalf, shall intermeddle with or take up any spirits, being in casks of less content than forty gallons, which may be found floating upon or sunk in the sea; and that if any spirits shall be taken up, and shall be found or discovered on board any vessel or boat belonging as aforesaid, within the limits of any port of the U. K. or *Isle of Man*, or within the distances in this act before mentioned, the vessel or boat on which the same shall be found or discovered, together with such spirits, shall be forfeited, and the person or persons in whose custody or possession the same shall be found shall forfeit the penalty of treble the value of such spirits, or the sum of 50*l.* at the election of the commissioners of H. M.'s customs."

Penalty, forfeiture of spirits, &c.

§ 71. "Provided always, that if any person or persons shall discover any spirits, being in casks of less content than forty gallons, which may be found floating upon or sunk in the sea, and shall give information to any officer of the customs, or other person or persons duly authorised to make seizure of such spirits, so that seizure shall be made of the same, the person or persons giving such information shall be entitled to and shall receive such reward as the commissioners of H. M.'s customs may deem it expedient to direct."

Reward to persons giving information of goods floating or sunk in the sea.

Of Proceedings before Justices, &c.



any offences committed in *Ireland* against this or any other act relating to the revenue of customs." 6 G.4. c.108.

§74. "In case any offence shall be committed upon the high seas against this or any other act relating to the revenue of customs, or any penalty or forfeiture shall be incurred upon the high seas, for any breach of such act, such offence shall, for the purpose of prosecution, be deemed and taken to have been committed, and such penalties and forfeitures to have been incurred, at the place on land in the U. K., or the *Isle of Man*, into which the person committing such offence, or incurring such penalty or forfeiture, shall be taken, brought, or carried; and in case such place on land is situated within any city, borough, liberty, division, franchise, or town corporate, as well any justice of the peace for such city, borough, liberty, division, franchise, or town corporate, as any justice of the peace of the county within which such city, borough, liberty, division, franchise, or town corporate is situated, shall have jurisdiction to hear and determine all cases of offences against such act so committed upon the high seas; any charter or act of parliament to the contrary notwithstanding: Provided always, that all offences against this or any other act relating to the revenue of customs committed in any city, borough, liberty, division, franchise, or town corporate, shall be deemed and taken to have been committed in the county within which such city, borough, liberty, division, franchise, or town corporate is situated, and as well any justices of the said city, borough, liberty, division, franchise, or town corporate, as any justices of any county in which such city, borough, liberty, division, franchise, or town corporate is situated, shall have jurisdiction to hear and determine the same." (*b*)

Offences on the high seas deemed to have been committed at the place into which the offender is taken. (*a*)

(*a*) And see 7 & 8 *G.*4. *c.* 56. § 10. *post*.

(*b*) *Kite and Lane's case, M.* 3 *G.* 4. 1 *B.* & *C.* 101. A rule had been obtained to show cause why a writ of *habeas corpus* should not issue, directed to the commander of H. M.'s ship of war, *Gloucester*, commanding him to bring up the bodies of *Charles Kite* and *Edward Lane*, who were confined on board that ship. The affidavits disclosed these facts:—On the 3d of *October* last, a boat, with *Kite* and *Lane* on board, was seized, within the harbour of *Folkstone*, for a breach of the revenue laws. The men were taken on shore at *Folkstone*, and confined there until the 5th of *October*, when they were again put on board the boat, and taken, together with it, to *Dover*. An information was laid against *K.* and *L.*, before two justices of that place, and separate convictions were drawn up as follows:—"Be it remembered, that on the 5th day of *October*, 1822, *Charles Kite*, of the town of *Folkstone* in *Kent*, fisherman, hath been duly convicted before us, two of H. M.'s justices of the peace *in and for the town and port of Dover*, in the said county, for having, on the 3d day of *October*, been found and taken on board a boat *in the harbour of Folkstone aforesaid*, laden," &c. (setting out the offence, evidence, and adjudication, according to the second form given by the 3 *G.* 4. *c.* 110.) In pursuance of that adjudication, *K.* and *L.* were afterwards taken on board the *Gloucester*. There was no custom-house at *Folkstone*, and smuggled goods seized there were generally taken to *Dover*; but the jurisdiction of the magistrates for the town and port of *Folkstone* extended to the place where this seizure was made, and they constantly took cognisance of offences against the revenue laws, when committed there. The justices of *Dover* had no jurisdiction within the town or harbour of *Folkstone*.—*Jervis*, on showing cause, contended, that the magistrates of *Dover* had authority to convict in this case.—*Bayley* J. Admitting the magistrates of *Dover* to have had the jurisdiction contended for, ought not the conviction on the face of it to have shown that jurisdiction?—*Littledale, contra*, contended, that the magistrates of *Dover* had no jurisdiction over the offence in question, and cited *Talbot* v. *Hubble*, 2 *Stra.* 1154. But admitting that jurisdiction could be given to them, *by the subsequent taking of* the vessel to that place, Kite and Lane's case. *A.* and *B.*, found and arrested on board a boat laden with smuggled goods within the harbour of *F.*, which was within a local exclusive jurisdiction, were afterwards taken, with the boat, &c. to the port of *D.*, and convicted before two justices of the town and port of *D.*, pursuant to stats. 45 G. 3. c. 121. § 7., 57 G.3. c. 87. § 5., and 3 G.4. c.110.: Held, that the conviction,

6 G.4. c.108.

Justices to summon party accused, and in default of appearance to proceed to the hearing and conviction. [See 7 G. 4. c. 48. § 18. *post.*]

which only stated that they had been found and taken on board a boat in the harbour of *F.*, was bad, for not showing that the justices of *D.* had jurisdiction over the offence.

Semble, that in this case only the justices of the local jurisdiction of *F.* had authority to convict; and that the 45 G.3. c. 121. § 7. gives jurisdiction to those justices only who reside near to the first port or place into

§ 75. "In cases where any information shall be exhibited before

the fact of its having been taken there should have appeared on the face of the conviction. Something should have been shown connecting the offence committed at *Folkstone* with the jurisdiction of magistrates appointed for the town and port of *Dover*. Nothing of that kind is stated. At all events, therefore, the conviction is bad.—*Abbott* C. J. Two questions have been raised in this case:—1st, Whether the magistrates of the town and port of *Dover* had authority over the subject-matter of the conviction? and 2dly, Whether the conviction is good, inasmuch as that authority is not apparent on the face of it? By the 45 *G.* 3. *c.* 121. § 7. it was enacted, that persons "taken on board of any ship, vessel, or boat, or on land, under the circumstances there stated, should be taken before one or more justice or justices residing near the port or place into which such ship, vessel, or boat should be taken or carried or near to the place where any such person should be so taken or arrested; and that such justice or justices might hold the party accused to bail, or, if he desired it, send him on board one of H. M.'s ships of war." By stat. 57 *G.* 3. *c.* 87. § 5., after reciting the former enactment, it is provided, that any *such* justice or justices shall have power to hear and decide upon any such complaint immediately, instead of holding the party to bail. Jurisdiction is, therefore, given to the same magistrates by both these acts. Now, it appears by the affidavits in this case, that the persons offending were arrested within the harbour of *Folkstone*; their vessel was detained there, and they were taken on shore within the local jurisdiction of the magistrates of that place. On a subsequent day, the prisoners were again put on board the vessel, and carried, together with it, to *Dover*. That raises the question, whether persons carried, by the voluntary act of the captors, within a particular jurisdiction, can afterwards, without any apparent necessity, be taken within the limits of another jurisdiction, and be there convicted of the offence imputed to them. If that can be done, this great inconvenience will result, that persons arrested under the provisions of the acts in question may be carried from port to port, at the pleasure of the captors, and may at last be convicted at one extremity of the kingdom of an offence committed at the other. I am strongly inclined to think that no such power exists. It is, however, unnecessary to decide expressly upon that point; for I am clearly of opinion, that the conviction itself is bad on the face of it. It is a first principle, as to all acts done by magistrates, that their jurisdiction should appear upon the face of their proceedings. *In convictions, the place for which the magistrates act must be shown; the offence must be set out:* and either it must appear that the offence was committed within the limits for which the convicting magistrates are appointed, or facts must be stated which give them jurisdiction beyond those limits. If

two (*a*) or more justices of the peace, or governor, deputy-governor, or deemster of the *Isle of Man*, for the recovery of any penalty under this or any other act relating to the revenue of customs (except as is hereinafter otherwise provided for), it shall and may be lawful for the said justices, or governor, deputy-governor, or deemster of the *Isle of Man*, and he or they is or are hereby authorised and required to (*b*) summon the party accused, and upon his, her, or their appearance or default, to proceed to the examination of the matter, and upon due proof thereof, either upon the voluntary confession of such party, or upon the oath of one or more credible witness or witnesses, (which oath the said justices, or governor, deputy-governor, or deemster of the *Isle of Man*, is and are hereby empowered to administer,) to convict the offender or offenders in the said penalty or penalties; and in case of the non-payment thereof, the said justices, or governor, deputy-governor, or deemster of the *Isle of Man*, is and are hereby authorised and required to cause the same, by warrant of distress and sale under their hands and seals, to be levied upon the goods and chattels of the said offender or offenders (*c*); (or in case it shall appear to such justices, or governor, deputy-governor, or deemster of the *Isle of Man*, either upon the confession of such offender or offenders, or otherwise, that such offender or offenders has or have not sufficient goods 6 G.4. c.108.

the prisoner. There were magistrates in *Folkstone*, before whom the prisoners might have been taken; they ought not, therefore, to have been taken before any other tribunal. Perhaps the case would be different if the ship came within the limits of a port, but went away again, either from stress of weather or other necessary cause, without communicating with the land. It is a settled principle, that penal statutes, and such as create a new jurisdiction, shall receive a strict construction. We have been told that there is no custom-house at *Folkstone*, and that, therefore, it would be inconvenient to land the goods found on board vessels seized for smuggling. If any inconvenience shall arise from this construction, that may be guarded against by another law. We must put that interpretation on the present law which the rules of construction require; and that is, such as will guard against the abuse of a new and extraordinary power. *Rule absolute.*

N.B. Summary convictions before magistrates being by virtue of a circumscribed and extraordinary jurisdiction, nothing can be intended to aid or extend that jurisdiction. Hence it has been always held necessary that the authority of the convicting magistrates should appear upon the face of their proceedings. *Rex* v. *Green*, *Cald.* 391. Upon this ground, in *Rex* v. *Jonson*, 1 *Str.* 261., the conviction was quashed, because it did not appear that it was made by justices of the county where the offence was committed; and in *Rex* v. *Curden*, 4 *Burr.* 2279., *Rex* v. *Jeffries*, 1 *T. R.* 241., *Rex* v. *Stone*, 1 *East*, 636., and *Rex* v. *Jarvis*, *ib.* 644. n. it was laid down as a general rule, that a conviction must show that the justices had jurisdiction. In *Rex* v. *Hazell*, 13 *East*, 139., which was a conviction of a person employed in a manufacture, for refusing to work, the justices had followed the form prescribed by the 41 *G.* 3. *c.* 38. That form, which was very similar to those given by the 3 *G.* 4. *c.* 110., required that the offence should be set out, but did not expressly require that the place where it was committed should be shown. The conviction described the offence minutely, but did not state where it was committed. *Per* Ld. *Ellenborough* C. J.—"It must appear upon the face of the conviction that the offence was committed within the county of the justices who convict the defendant, without which they can have no jurisdiction. The statute never meant to give those magistrates jurisdiction to enquire of this offence throughout every county; the allegation, therefore, that the offence was committed at some place *within* the county of which they were justices, is essential to give them jurisdiction." See also *Rex* v. *Edwards*, 1 *East*, 278.

(*a*) Or one justice, 7 & 8 *G.* 4. *c.* 56. § 7. *post.*

(*b*) As to service of summons, 7 & 8 *G.* 4. *c.* 56. § 8. *post.*

(*c*) As to payment of penalties. *See ibid.* § 11. *post.*

6 G. 4. c. 108.

and chattels whereon to levy the said penalty or penalties, it shall be lawful for such justices, or governor, deputy-governor, or deemster of the *Isle of Man*, in default of sufficient distress,) to commit such offender or offenders to any of H. M.'s gaols in the county where the offence shall have arisen, or wherein the offender or offenders shall have been found, there to remain until the penalty or penalties shall be paid: Provided always, that when any person or persons shall have been committed by any justices, or governor, deputy-governor, or deemster of the *Isle of Man*, to any prison for the non-payment of such penalty, or in default of distress, it shall be lawful for the gaoler or keeper of such prison, and he is hereby required to discharge such person at the end of six calendar months from the date of such warrant by which the said person is committed to his custody, and he or they shall be wholly discharged from the payment of such penalty or penalties."

Justices empowered to mitigate in certain cases.

§ 76. "Where any party shall or may be convicted before any two or more of H. M.'s justices of the peace, or governor, deputy-governor, or deemster as aforesaid, in any penalty or penalties incurred as aforesaid (except as is hereinafter provided), it shall and may be lawful for the said justices, or governor, deputy-governor, or deemster of the *Isle of Man*, in cases where upon consideration of the circumstances he or they shall deem it expedient so to do, to mitigate the payment of the said penalty or penalties, so as the sum to be paid by such party be not less than one-fourth of the amount of the penalty in which such party shall have been convicted."

Suits in courts of record to be commenced within three years.

§ 77. "All suits, indictments, or informations exhibited for any offence against this or any other act relating to the revenue of customs, in any of H. M.'s courts of record at *Westminster*, or in the courts of exchequer in *Scotland*, or in *Dublin*, or in the royal courts of *Guernsey*, *Jersey*, *Alderney*, *Sark*, or *Man*, shall and may be had, brought, sued, or exhibited, within three years next after the date of the offence committed; and shall and may be exhibited before any two or more justices of the peace, or governor, deputy-governor, or deemster in the *Isle of Man*, within six months next after the date of the offence committed."

Informations before justices, &c. within six months.

Indictments for offences against this act, may be enquired into in any county of England.

§ 78. "Any indictment or information which shall be found or prosecuted for any offence against this or any other act relating to the revenue of customs, shall and may be enquired of, examined, tried, and determined in any county of *England*; and any such indictment or information which shall be found, commenced, or prosecuted in *Scotland*, may be enquired of, examined, tried, and determined in any county in *Scotland*; and any such indictment or information which shall be found or commenced in *Ireland*, may be enquired of, examined, tried, and determined in any county in *Ireland*, in such manner and form as if the offence had been committed in the said county where the said indictment or information shall be tried."

Mode of proceeding before justices for condemnation of seized goods.

§ 79. "In all cases of information exhibited before any two or more justices of the peace, or any governor, deputy-governor, or deemster as aforesaid, for the forfeiture of any goods whatsoever, seized under any act or acts relating to the revenue of customs, or for the prevention of smuggling, and where the party to whom such goods belonged, or from whom they were seized, is known,

it shall be lawful for the said justices, or governor, deputy-governor, or deemster, and he and they is and are hereby authorised and required to summon the said party, and upon his, her, or their appearance or default to proceed to the examination of the matter of fact, and upon due proof that the said goods are liable to forfeiture under this or any act relating to the revenue of customs, to condemn the said goods; and in case the party from whom the said goods have been seized is not known, it shall and may be lawful for the said justices, or governor, deputy-governor, or deemster, and he or they is and are hereby required, to cause public notice to be stuck up in the royal exchange if the seizure is made in *London*, at the market-cross if in *Edinburgh*, and at the royal exchange if in *Dublin*, and if the seizure is made at any other place, then a notice shall be publicly read by the public crier at the next market-place, stating that the goods have been so seized, and that the hearing relative to the same will take place on a certain day, not being less than eight days from the date of the said notice; and in default of any person's attendance in consequence of the said notice, the said justices, or governor, deputy-governor, or deemster, are to proceed to the hearing and condemnation of the said goods as aforesaid." 6 G. 4. c. 108.

§ 80. "It shall and may be lawful for any two or more justices of the peace, or governor, deputy-governor, or deemster as aforesaid, before whom any person liable to be arrested and detained, and who shall have been arrested and detained, for being found or discovered to have been on board any vessel or boat liable to forfeiture under this or any other act relating to the revenue of customs, or for unshipping, carrying, conveying, or concealing, or aiding, assisting, or being concerned in unshipping, carrying, conveying, or concealing any spirits or tobacco liable to forfeiture under this or any such act, shall be carried, on the confession of such person of such offence, or on proof thereof upon the oaths (*b*) of one or more credible witness or witnesses, to convict such person of any such offence; and every such person so convicted as aforesaid shall immediately upon such conviction pay into the hands of such justices, or governor, deputy-governor, or deemster, for the use of H. M., the penalty of 100*l*., without any mitigation whatever, for any such offence of which he shall be so convicted as aforesaid; or in default thereof the said justices, or governor, deputy-governor, or deemster, shall and he and they is and are hereby respectively authorised and required, by warrant under his or their hand and seal or hands and seals, to commit such person so convicted as aforesaid, and making such default as aforesaid, to any gaol or prison, there to remain until such penalty shall be paid: Provided, that if the person convicted of any such offence or offences shall be a seaman or seafaring man, and fit and able to serve H. M., in his naval service, and shall not prove that he is

Persons detained for certain offences, to pay 100*l*., or if seafaring men, to be sent into the naval service. (*a*)

(*a*) See 7 & 8 *G.* 4. *c.* 56. § 4.

(*b*) *Aldridge's case*, *H.* 4 & 5 *G.* 4. 2 *B.* & *C.* 600. In a conviction it is necessary that the offence should appear to have been proved on the oath of one or more credible witnesses; and therefore, where the conviction stated "that *R. A.* was convicted of carrying brandy liable to seizure" (without saying *upon oath*), and proceeded, "and it is this day in like manner also proved on the oath of *J. H.* that the brandy was taken from *R. A.*, and that he was detained by an officer of the navy," &c: Held, that carrying the brandy was the offence; and as that was not stated to have been proved on oath, the conviction was bad, and that *R. A.* (having been committed to prison) was entitled to be discharged.

3 G. 4. c. 108.

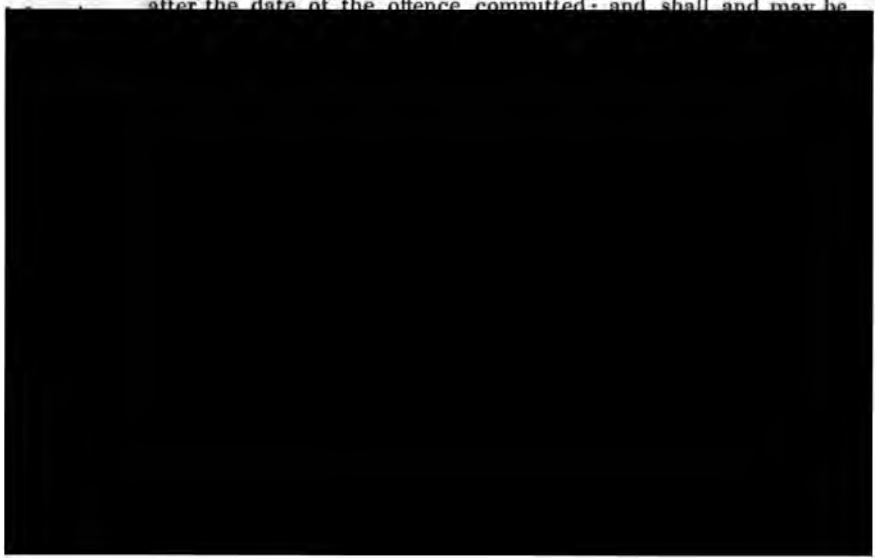
and chattels whereon to levy the said penalty or penalties, it shall be lawful for such justices, or governor, deputy-governor, or deemster of the *Isle of Man*, in default of sufficient distress,) to commit such offender or offenders to any of H. M.'s gaols in the county where the offence shall have arisen, or wherein the offender or offenders shall have been found, there to remain until the penalty or penalties shall be paid: Provided always, that when any person or persons shall have been committed by any justices, or governor, deputy-governor, or deemster of the *Isle of Man*, to any prison for the non-payment of such penalty, or in default of distress, it shall be lawful for the gaoler or keeper of such prison, and he is hereby required to discharge such person at the end of six calendar months from the date of such warrant by which the said person is committed to his custody, and he or they shall be wholly discharged from the payment of such penalty or penalties."

Justices empowered to mitigate in certain cases.

§ 76. "Where any party shall or may be convicted before any two or more of H. M.'s justices of the peace, or governor, deputy-governor, or deemster as aforesaid, in any penalty or penalties incurred as aforesaid (except as is hereinafter provided), it shall and may be lawful for the said justices, or governor, deputy-governor, or deemster of the *Isle of Man*, in cases where upon consideration of the circumstances he or they shall deem it expedient so to do, to mitigate the payment of the said penalty or penalties, so as the sum to be paid by such party be not less than one-fourth of the amount of the penalty in which such party shall have been convicted."

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§ 77. "All suits, indictments, or informations exhibited for any offence against this or any other act relating to the revenue of customs, in any of H. M.'s courts of record at *Westminster*, or in the courts of exchequer in *Scotland*, or in *Dublin*, or in the royal courts of *Guernsey*, *Jersey*, *Alderney*, *Sark*, or *Man*, shall and may be had, brought, sued, or exhibited, within three years next after the date of the offence committed; and shall and may be



it shall be lawful for the said justices, or governor, deputy-governor, or deemster, and he and they is and are hereby authorised and required to summon the said party, and upon his, her, or their appearance or default to proceed to the examination of the matter of fact, and upon due proof that the said goods are liable to forfeiture under this or any act relating to the revenue of customs, to condemn the said goods; and in case the party from whom the said goods have been seized is not known, it shall and may be lawful for the said justices, or governor, deputy-governor, or deemster, and he or they is and are hereby required, to cause public notice to be stuck up in the royal exchange if the seizure is made in *London*, at the market-cross if in *Edinburgh*, and at the royal exchange if in *Dublin*, and if the seizure is made at any other place, then a notice shall be publicly read by the public crier at the next market-place, stating that the goods have been so seized, and that the hearing relative to the same will take place on a certain day, not being less than eight days from the date of the said notice; and in default of any person's attendance in consequence of the said notice, the said justices, or governor, deputy-governor, or deemster, are to proceed to the hearing and condemnation of the said goods as aforesaid." 6 G. 4. c. 108.,

§ 80. "It shall and may be lawful for any two or more justices of the peace, or governor, deputy-governor, or deemster as aforesaid, before whom any person liable to be arrested and detained, and who shall have been arrested and detained, for being found or discovered to have been on board any vessel or boat liable to forfeiture under this or any other act relating to the revenue of customs, or for unshipping, carrying, conveying, or concealing, or aiding, assisting, or being concerned in unshipping, carrying, conveying, or concealing any spirits or tobacco liable to forfeiture under this or any such act, shall be carried, on the confession of such person of such offence, or on proof thereof upon the oaths (*b*) of one or more credible witness or witnesses, to convict such person of any such offence; and every such person so convicted as aforesaid shall immediately upon such conviction pay into the hands of such justices, or governor, deputy-governor, or deemster, for the use of H. M., the penalty of 100*l*., without any mitigation whatever, for any such offence of which he shall be so convicted as aforesaid; or in default thereof the said justices, or governor, deputy-governor, or deemster, shall and he and they is and are hereby respectively authorised and required, by warrant under his or their hand and seal or hands and seals, to commit such person so convicted as aforesaid, and making such default as aforesaid, to any gaol or prison, there to remain until such penalty shall be paid: Provided, that if the person convicted of any such offence or offences shall be a seaman or seafaring man, and fit and able to serve H. M., in his naval service, and shall not prove that he is

Persons detained for certain offences, to pay 100*l*., or if seafaring men, to be sent into the naval service. (*a*)

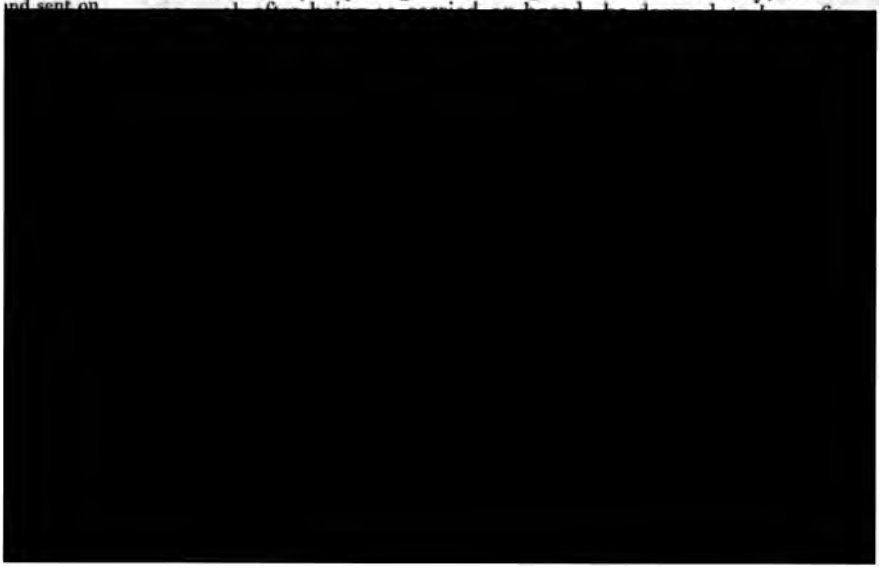
(*a*) See 7 & 8 *G.* 4. *c.* 56. § 4.

(*b*) *Aldridge's case, H.* 4 & 5 *G.*4. 2 *B.*& *C.*600. In a conviction it is necessary that the offence should appear to have been proved on the oath of one or more credible witnesses; and therefore, where the conviction stated "that *R. A.* was convicted of carrying brandy liable to seizure" (without saying *upon oath*), and proceeded, "and it is this day in like manner also proved on the oath of *J. H.* that the brandy was taken from *R. A.*, and that he was detained by an officer of the navy," &c: Held, that carrying the brandy was the offence; and as that was not stated to have been proved *on oath, the conviction* was bad, and that *R. A.* (having *been committed to prison*) *was entitled to* be discharged.

6 G.4. c.108. not a subject of H. M., it shall and may be lawful for any such justices, or governor, deputy-governor, or deemster, and he and they is and are hereby required, in lieu of such penalty, by warrant under his or their hand and seal or hands and seals, to order any officer of the army, navy, or marines, being duly authorised and on full pay, or officer of customs or excise, to carry or convey, or cause to be carried or conveyed, such person on board of any of H. M.'s ships, in order to his serving H. M. in his naval service for the term of five years; and if such person shall at any time within that period by any means escape or desert from such custody or service respectively, he shall be liable at any time or times afterwards to be again arrested and detained by any officer of the customs, or any other person, and delivered over as aforesaid to complete his service of five years: Provided also, that if it shall be made to appear to any such justices, or governor, deputy-governor, or deemster, that convenient arrangement cannot be made at the time of the conviction of the said party, for immediately carrying or conveying such seaman or seafaring man, so convicted as aforesaid, on board any of H. M.'s ships in order to serve H. M., it shall and may be lawful for any such justices, or governor, deputy-governor, or deemster, to commit any such seaman or seafaring man so convicted as aforesaid to any prison or gaol, there to remain in safe custody for any period not exceeding one month, in order that time may be given to make arrangements for so conveying such seaman or seafaring man on board any of H. M.'s ships as aforesaid: Provided also, that the commissioners of H. M.'s treasury, or any three or more of them, shall have full power and authority to remit or mitigate any such penalty, punishment, or service as aforesaid, whether the parties shall be seafaring men or otherwise."

If on examination of persons convicted and sent on

§ 81. "If any person so convicted as a seaman or a seafaring man, and carried on board any of H. M.'s ships of war, shall, on examination by any surgeon or surgeons of H. M.'s navy, within



convictions for such offences, and warrants of justices of the peace, governors, deputy-governors, or deemsters, founded upon such convictions, shall be drawn respectively in the form or to the effect in the schedules to this act annexed." 6 G.4. c.108.

§ 83. Reciting that "it is expedient that time should be allowed to prepare informations, convictions, and warrants of commitment;" it is enacted, "that where any person or persons shall have been arrested and detained by any officer or officers of the army, navy, or marines, being duly authorised and on full pay, or any officer of customs or excise, or any person or persons acting in his or their aid or assistance, or duly employed for the prevention of smuggling, for any offence under this or any other act relating to the revenue of customs, and shall have been taken and carried before any (*a*) two justices of the peace, to be dealt with according to law, if it shall appear to such justices that there is reasonable cause to detain such person or persons, such justices may and they are hereby authorised to order such person or persons to be detained a reasonable time, as well before as after any information has been exhibited against such party; and at the expiration of such time, such justices (*a*) may proceed finally to hear and determine the matter." Persons arrested for certain offences may be detained by order of justices. (*a*)

§ 98. "Whenever any person shall be charged with any offence against this or any act relating to the revenue of customs, or for which he or she may be prosecuted by indictment or information in H. M.'s court of K. B., and the same shall be made appear to any judge of the same court, by affidavit, or by certificate of an information or indictment being filed against such person in the said court for such offence, it shall and may be lawful for such judge to issue his warrant under his hand and seal, and thereby to cause such person to be apprehended and brought before him, or some other judge of the same court, or before some one of H. M.'s justices of the peace, in order to his or her being bound to the king's majesty, with two sufficient sureties, in such sum as in the said warrant shall be expressed, with condition to appear in the said court at the time mentioned in such warrant, and to answer to all and singular indictments or informations for any such offence; and in case any such person shall neglect or refuse to become bound as aforesaid, it shall be lawful for such judge or justice respectively to commit such person to the common gaol of the county, city, or place where the offence shall have been committed, or where he or she shall have been apprehended, there to remain until he or she shall become bound as aforesaid, or shall be discharged by order of the court in term-time, or of one of the judges of the said court in vacation; and the recognizance to be thereupon taken shall be returned and filed in the said court, and shall continue in force until such person shall have been acquitted of such offence, or in case of conviction, shall have received judgment for the same, unless sooner ordered by the court to be discharged; and that where any person, either by virtue of such warrant of commitment aforesaid, or by virtue of any writ of *capias ad respondendum*, issued out of the said court, is now detained, or shall hereafter be committed to and detained in any gaol for want of bail, it shall be lawful for the prosecutor Judges of the court of K. B. may issue warrant for the apprehension of offenders, &c.

(*a*) Or *one justice*. 7 & 8 G. 4. c. 56. § 7. *post*.

G. 4. c. 108. of such indictment or information, to cause a copy thereof to be delivered to such person, or to the gaoler, keeper, or turnkey of the gaol wherein such person is or shall be so detained, with a notice thereon indorsed, that unless such person shall, within eight days from the time of such delivery of a copy of the indictment or information as aforesaid, cause an appearance, and also a plea or demurrer to be entered in the said court to such indictment or information, an appearance and the plea of not guilty will be entered thereto in the name of such person; and in case he or she shall thereupon, for the space of eight days after the delivery of a copy of such indictment or information as aforesaid, neglect to cause an appearance, and also a plea or demurrer to be entered in the said court to such indictment or information, it shall be lawful for the prosecutor of such indictment or information, upon affidavit being made and filed in the court of the delivery of a copy of such indictment or information, with such notice indorsed thereon as aforesaid, to such person, or to such gaoler, keeper, or turnkey, as the case may be, which affidavit may be made before any judge or commissioner of the said court, authorised to take affidavits in the said court, to cause an appearance and the plea of not guilty to be entered in the said court to such indictment or information for such person; and such proceedings shall be had thereupon as if the defendant in such indictment or information appeared and pleaded not guilty, according to the usual course of the said court; and that, if upon trial of such indictment or information, any defendant so committed and detained as aforesaid shall be acquitted of all the offences therein charged upon him or her, it shall be lawful for the judge before whom such trial shall be had, although he may not be one of the judges of the said court of king's bench, to order that such defendant shall be forthwith discharged out of custody as to his or her commitment as aforesaid, and such defendant shall be thereupon discharged accordingly."



whether the customs, excise, or inland duties have been paid for the same, or the same have been lawfully imported, or concerning the place from whence such goods were brought, then and in such case the proof thereof shall lie on the owner or claimer of such goods, and not on the officer who shall seize and stop the same." 6 G.4. c.108.

§ 103. "No justice of the peace who is a collector or comptroller, or otherwise connected with the collection of the customs or excise, shall take cognizance of any matter relating to the summary convictions of persons offending against this act." No justice who is a collector, &c. of customs, to take cognizance of convictions under this act.

§ 104. "In case of any information or proceedings had under this or any other act relating to the revenue of customs, the averment that the commissioners of H. M.'s customs or excise have directed or elected such information or proceedings to be instituted, or that any vessel is foreign or *British*, or that any person detained is or is not a subject of H. M., or that any person detained is or is not a seaman or seafaring man, or fit and able to serve H. M. in his naval service, or that any person is an officer of the customs, shall be sufficient, without proof as to such fact or facts, unless the defendant in such case shall prove to the contrary." Averment of certain matters to be sufficient, until the contrary is proved.

§ 105. "If upon any trial a question shall arise whether any person is an officer of the army, navy, or marines, being duly authorised and on full pay, or officer of customs or excise, evidence of his having acted as such shall be deemed sufficient, and such person shall not be required to produce his commission or deputation unless sufficient proof shall be given to the contrary; and every such officer, and any person acting in his aid or assistance, shall be deemed a competent witness upon the trial of any suit or information, on account of any seizure or penalty as aforesaid, notwithstanding such officer or other person may be entitled to the whole or any part of such seizure or penalty." Viva voce evidence may be given that a share of penalty not to disqualify officers as witnesses.

§ 72. "For the necessary subsistence of any poor person confined in the U. K., or in the *Isle of Man*, under or by virtue of any exchequer or other process for the recovery of any duties or penalties, either upon bond or otherwise, under this or any other act relating to the revenue of customs or excise, sued for under or by virtue of any order of the commissioners of H. M.'s customs or excise, it shall and may be lawful to and for the commissioners of customs or excise to cause an allowance, not exceeding the sum of 7½*d.*, and not less than 4½*d. per* day, to be made to any such poor person, out of any money in their hands arising from the duties of customs or excise, as the case may require." Allowance to poor persons confined for offences against laws of customs and excise.

By 7 *G.*4. *c.*48. § 17. "No writ of *certiorari* shall issue from H. M.'s court of king's bench to remove any proceedings before any justice or justices of the peace under any act for the prevention of smuggling, or relating to the revenue of the customs; nor shall any writ of *habeas corpus* issue to bring up the body of any person who shall have been convicted before any justice or justices of the peace under any such act, unless the party against whom such proceeding shall have been directed, or who shall have been so convicted, or his attorney or agent, shall state in an affidavit in writing, to be duly sworn, the grounds of objection to such proceedings or conviction; and that upon the return to such writ of *certiorari* or *habeas corpus no objection shall* be taken or con- 7 G.4. c.48. Writ of certiorari and of habeas corpus not to be granted unless objections to proceedings be stated.

Schedules to which the Act 6 *G.* 4. *c.* 108. refers.

A. **A.** Form of Information before Justices of the Peace, where the Party charged is a Subject of His Majesty, and a pecuniary Penalty is inflicted.

County of ——— to wit. } *BE it remembered, that on the ——— day of ———, in the year of our Lord ———, A B., officer of customs, who is directed by the commissioners of his majesty's customs to prefer this information, gives us ———, esquires, two of his majesty's justices of the peace, to understand and be informed, that* C. D., *being a subject of his majesty, on the ——— day of ———, in the year of our Lord ———* [here state the offence], *contrary to the form of the statute in that case made and provided, whereby the said* C. D. *hath forfeited the sum of ——— pounds.*

B. **B.** Form of a Conviction to be used for an Offence against this Act, in Cases where a pecuniary Penalty is inflicted upon the Offender being a Subject of His Majesty.

County of ——— to wit. } *BE it remembered, that on the ——— day of ———, in the year of our Lord ———, an information was exhibited by* A. B., *officer of customs, before us ———, esquires, two of his majesty's justices of the peace, against* C. D.; *which said information charged, that the said* C. D. *on the ——— day of ———, in the year of our Lord ———* [here state the offence as in the information], *contrary to the form of the statute, which offence has been duly proved before us the said justices: We do therefore adjudge, that the said* C. D. *hath forfeited for his said offence the sum of ——— pounds. Given under our hands and seals, the ——— day of ———.*

[In cases where the magistrates exercise the power of mitigation,

and require you the said E. F., *the gaoler or keeper of the said* ———, *to receive and take the said* C. D. *into your custody, and him safely to keep, until he shall duly pay the said sum of* ———. *Given under our hands and seals at* ———, *in the* ——— *of* ———, *this* ——— *day of* ———, *in the year of our Lord* 182—.

D. Warrant of Distress. D.

County of ——— to wit. } To *A. B.*

WHEREAS C. D. *has been duly convicted before us* ——— *esquires, two of his majesty's justices of the peace, of the offence of having* [here state the offence as in the information]; *And whereas the said* C. D. *has forfeited, for his said offence, the sum of* ——— *pounds, which said sum of* ——— *pounds has not been paid: These are therefore to command you, the said* A. B., *to levy the said sum of* ——— *by distress and sale of the goods and chattels of the said* C. D. *And we the said justices do hereby order and direct the goods and chattels so to be distrained, to be sold and disposed of within* ——— *days after such distraint, unless the said sum of* ——— *for which such distress shall be made, together with the reasonable charges of taking and keeping such distress, shall be sooner paid. And you the said* A. B. *are hereby commanded to certify to us, the said justices, on the* ——— *day of* ——— *next ensuing, what you shall do by virtue of this warrant. Given under our hands and seals at* ———, *in the* ———, *this* ——— *day of* ———, *in the year of our Lord* 18—.

E. Form of an Information before Justices of the Peace, where the Party charged is a Seaman or seafaring Man, and fit and able to serve His Majesty in his Naval Service. E.

County of ——— to wit. } *BE it remembered, that on the* ——— *day of* ———, *in the year of our Lord* ———, A. B., *officer of customs, who is directed by the commissioners of his majesty's customs to prefer this information, gives us* ——— *esquires, two of his majesty's justices of the peace, to understand and be informed, that* C. D., *being a subject of his majesty, and a seaman and seafaring man, and fit and able to serve his majesty in his naval service, on the* ——— *day of* ———, *in the year of our Lord* ——— [here state the offence], *contrary to the form of the statute in that case made and provided, whereby the said* C. D. *hath become liable to serve his majesty in his naval service, for the term of five years.*

F. Form of a Conviction where the Party convicted is a Seaman or seafaring Man, and fit and able to serve His Majesty in his Naval Service. F.

County of ——— to wit. } *BE it remembered, that on the* ——— *day of* ———, *in the year of our Lord* ———, *an information was exhibited before us,* ——— esquires,

two of his majesty's justices of the peace, against C. D. *by* A. B. *officer of customs, which said information charged, that the said* C. D., *being a subject of his majesty, and a seafaring man, and fit and able to serve his majesty in his naval service, on the ——— day of ———, in the year of our Lord ———* [here state the offence as in the information], *contrary to the form of the statute, which offence has been duly proved before us the said justices; and it appearing to us the said justices, that the said* C. D. *is a seafaring man, and fit and able to serve his majesty in his naval service, we the said justices do therefore adjudge the said* C. D. *to serve in his majesty's naval service for the term of five years. Given under our hands and seals, this ——— day of ———, in the year of our Lord ———.*

6. G. Form of a Warrant of Commitment to serve in the Navy.

County of ——— to wit. } To *A. B.*, officer of ———, and to the commander of one of his majesty's ships of war.

WHEREAS C. D. *has been duly convicted before us, ——— esquires, two of his majesty's justices of the peace, upon the information of ———, officer of customs, of having* [here state the offence, as charged in the information]; *And whereas the said* C. D. *has not proved that he is not a subject of his majesty, and being a seafaring man, and fit and able to serve his majesty in his naval service, we the said justices did adjudge the said* C. D. *to serve his said majesty in his naval service for the space of five years, pursuant to the statute in that case made and provided: These are therefore to require you the said* A. B. *to carry and convey the said* C. D. *on board of one of his majesty's ships, in order to his serving his majesty in his naval service; and we, the said justices, do hereby require the commander of his majesty's ship to whom this warrant is delivered, to receive and take the said* C. D. *on board his said*

[redacted]

I. Form of Conviction to be used for an Offence against this Act, in the Case of the Person charged not being a Subject of His Majesty. I.

County of ——— to wit. } *BE it remembered, that on the ——— day of ———, in the year of our Lord ———, an information was exhibited by* A. B., *an officer of the customs, before us, ——— esquires, two of his majesty's justices of the peace, against* C. D., *which said information charged, that the said* C. D. *on the ——— day of ———, in the year of our Lord ———,* [here state the offence as in the information, setting forth that the same took place within one league of the coast of this kingdom;] *contrary to the form of the statute; which offence has been duly proved before us the said justices: We do therefore adjudge, that the said* C. D. *hath forfeited for his said offence the sum of ———. Given under our hands and seals, this ——— day of ———, in the year of our Lord ———.*

K. Form of Warrant of Commitment to Gaol, of a Person not being a Subject of His Majesty. K.

County of ——— to wit. } To *A. B.*, officer of customs, and to *E. F.*, the gaoler or keeper of the ——— at ———, in the ———.

WHEREAS C. D., *not being a subject of his majesty, has been duly convicted before us, ——— esquires, two of his majesty's justices of the peace, of having* [here state the offence as in the information, setting forth that the same took place within one league of the coast of this kingdom;] *And whereas we the said justices did adjudge, that the said* C. D. *had forfeited for his said offence, the sum of ———, which said sum of ——— has not been paid: These are therefore to require you the said* A. B. *forthwith to take, carry, and convey the said* C. D. *to the ——— at ———, in the ———, and to deliver him into the custody of the gaoler or keeper of the said ———; and we the said justices do hereby authorise and require you the said* E. F., *the gaoler or keeper of the said ——— to receive and take the said* C. D. *into your custody, and him safely to keep until he shall duly pay the said sum of ———. Given under our hands and seals, at ———, in the ——— of ———, this ——— day of ———, in the year of our Lord* 18—.

L. Form of an Information against an Officer of Customs. L.

County of ——— to wit. } *BE it remembered, that on the ——— day of ———, in the year of our Lord ———,* A. B., *officer of the customs, who is directed by the commissioners of his majesty's customs to prefer this information, gives us, ——— esquires, two of his majesty's justices of the peace, to understand and be informed, that* C. D., *officer of the customs, on, &c.* [here state the offence], *contrary, &c. whereby the said* C. D. *has forfeited the sum of ———.*

[The forms of conviction and commitment, (B) and (C), may be applied to this case.]

§ 1. (d) Of the Duties.

Customs.

Under the word *customs* is comprised every duty which is to be paid upon the importation or exportation of goods, wares, or merchandise. 6 *Bac. Abr.* 259.

Duties upon the importation or exportation of goods, wares, or merchandise were perhaps, at first, imposed for enabling the crown to make and maintain commodious ports and harbours, and to keep up a fleet for the protection of the ships of merchants against enemies and pirates. 6 *Bac. Abr.* 259. See 1 *Blac. Com.* 313. *Dyer*, 165. (*b*).

6 G.4. c.111. Former acts repealed.

By stat. 6 *G.* 4. *c.* 111. Intituled "*An act for granting duties of customs*," § 1. reciting, that by an act passed in the then session of parliament (6 *G.*4. *c.* 105.) all the acts and parts of acts by which the duties of customs had been granted were repealed; and that it was expedient to make provision for granting other duties of customs in lieu thereof: it is enacted, that this act should commence on 5th *January* 1826, and be and continue in full force and operation for granting duties of customs.

Commencement of the act.

New duties.

§ 2. And in lieu of all other duties of customs (except the duties upon corn, grain, meal, or flour,) there shall be raised and collected the several duties of customs, and there shall be allowed the several drawbacks as the same are respectively set forth in the tables (*a*) annexed to the act.

Duties, &c. to be under the management of the commissioners of customs.

§ 4. The duties and drawbacks by this act imposed and allowed, shall be under the management of the commissioners of H. M.'s customs, and shall be ascertained, raised, levied, collected, paid, recovered, allowed, and applied or appropriated under the provisions of the act passed in the then present session of parliament, intituled "*An act for the general regulation of the customs.*"

§ 17. The enactments and provisions of this act, and of all other acts relating to the customs passed in the same session of par-



II. Of the Excise in general.

(a) *Commissioners, Collectors, and Offices of Excise.*
[12 C. 2. c. 24. — 7 & 8 G. 4. c. 53.]

(b) *Entries.*
[7 & 8 G. 4. c. 53.]

(c) *Duties.*
[7 & 8 G. 4. c. 53.]

(d) *Removing Goods to avoid Duty.*
[7 & 8 G. 4. c. 53.]

(e) *Obstructing Officers.*
[7 & 8 G. 4. c. 53.]

(f) *Searches and Seizures.*
[7 & 8 G. 4. c. 53.]

(g) *Claiming Goods seized.*
[7 & 8 G. 4. c. 53.]

(h) *Recovery of Debts and Penalties, and Proceedings on Condemnation and Sale of forfeited Goods.*
[7 & 8 G. 4. c. 53.]

(i) *Appeal.*
[7 & 8 G. 4. c. 53.]

(k) *Overcharges.*
[7 & 8 G. 4. c. 53.]

(l) *Oaths and Affirmations.*
[7 & 8 G. 4. c. 53.]

(m) *Receiver-General, Comptroller, and Auditor.*
[7 & 8 G. 4. c. 53.]

(n) *Actions against Excise Officers, &c.*
[7 & 8 G. 4. c. 53.]

(o) *Forging Debentures.*
[41 G. 3. c. 91. — 38 G. 3. c. 54. — 52 G. 3. c. 143.]

Excise, what.

The *Excise* is a tax laid upon the retailer or consumer of any commodity; it is called *Excise* from the *Dutch* word *Accise*, which signifies an assessment upon any commodity; others derive it from the word *Excisum* as a part of the profit cut off from the whole. *Gilb. Exch. 252.*

Original institution of the excise in 1643, with the appointment of commissioners.

This was begun on the 11th of *September* (a) 1643, by the long parliament; and eight commissioners of excise were appointed, and they were to choose their own officers, viz. their register, collectors, clerks, and other subordinate officers.

(a) The parliament's ordinance for the excise bears date *July* 22. 1643. It was laid upon liquors, grocery-wares, silks, linens, cloths, furs, and almost all other sorts of commodities imported. That the reader may have a notion of it, it will be proper to mention some of the particulars. Every pound of tobacco, not of the *English* plantation, was to pay, over and above all customs, 4*s.*, and that of *English* plantation, 2*s.*; every tun of wine retailed, 6*l.*, and for private use, 3*l.*; *Malaga* raisins, one *farthing* per pound; currants, 1*d.*; loaf-sugar, 4*d.* per pound; cloth of gold and silver, 8*s.*, and tissue, 10*s.* a yard. Damask table-linen, 1*s.* a yard, &c. It is somewhat strange, that *Rushworth* has not inserted this curious ordinance in his *Collections*. 2 *Rapin's Hist.* 497. *note* 3.

§ II. (a) Commissioners, Collectors, and Offices of Excise.

7 & 8 G. 4. c. 53. By stat. 7 & 8 *G.* 4. *c.* 53., intituled "An act to consolidate and amend the laws relating to the collection and management of the revenue of excise throughout Great Britain and Ireland."

Commencement of the act. § 129. This act shall commence from the 5th January, 1828.

Former regulations inconsistent with this act repealed. § 127. "After the commencement of this act, all laws, powers, authorities, rules, regulations, restrictions, exceptions, provisions, clauses, matters, and things, provided for or contained in any act or acts of parliament in force at and immediately before the commencement of this act, relating to the revenue of excise in any part of the U. K., or to any matter or thing expressly provided for by this act, which are repugnant to or inconsistent with the several matters, clauses, provisions, and regulations of this act, or any of them, shall be and the same are hereby respectively repealed, and shall no longer be put in force or observed in any part of the U. K.; save and except so far as the same repeal or repeals any former act or acts, or any part or parts of any former act or acts of parliament; and save and except so far as the same, or any of them, relate or relates to the recovering, suing for, mitigating, levying, or paying any duty, or any arrear thereof, charged or chargeable, or any penalty or forfeiture incurred for any offence against any act or acts of parliament relating to the revenue of excise, which shall have been or shall be committed, and for the recovery of which duty or arrear thereof, penalty or forfeiture, proceeding shall have been commenced before and shall be depending at the time of the commencement of this act; and save and except also as to any duty or arrear thereof charged or chargeable, and penalty or forfeiture which shall have been incurred, under or by virtue of any act or acts of parliament relating to the revenue of excise, by this act repealed as aforesaid, for which no proceedings for the recovery thereof shall have



from time to time to appoint, under the great seal of the U. K., any number of persons not exceeding thirteen, to be commissioners of excise for the collection and management of the whole of the revenue of excise arising in and throughout the whole of the U.K. of *G. B.* and *Ireland*, and the islands and territories thereunto respectively belonging, and also to appoint any number of persons not exceeding four, to be assistant commissioners of excise, to sit and act in manner hereinafter mentioned, in and for *Scotland* and *Ireland;* and that each of such commissioners and assistant commissioners, when so appointed, shall have and hold his respective office during H. M.'s pleasure." 7&8 G. 4. c. 53. land and Ireland.

§ 2. "Any four or more of the commissioners of excise shall constitute a board of commissioners of excise for the U. K., for the collection and management of the whole of the revenue of excise arising in and throughout the whole of the U. K. of *G. B.* and *Ireland*, and the islands and territories thereunto respectively belonging, and of all the duties imposed or to be imposed by any act or acts of parliament which have been or are or shall be made payable to H. M., his heirs and successors, as duties of excise, or duties under the collection and management of the commissioners of excise, and of all arrears of any of such duties, and of all penalties and forfeitures arising, or which shall have arisen, or shall arise or accrue, or remain or become due to H. M., his heirs and successors, within the said U. K. of *G. B.* and *Ireland*, and the islands and territories thereunto respectively belonging, under any law or laws touching or relating to the said revenues; and every such board shall have full power and authority to order and direct, and to do and permit to be done, throughout the U. K., or in any part thereof, all acts, matters, and things which shall by this act, or by any other act or acts of parliament, be required to be made or done by the commissioners of excise, or which shall relate to or in anywise concern the revenue under their collection and management; and that all rules, orders, acts, matters, and things relating to or concerning the said revenue, which shall have been or shall be made or done by any such board, shall be good, valid, and effectual in law, to all intents and purposes whatsoever, as if made or done by all the commissioners of excise: Provided always, that every such board, and the commissioners of excise respectively, shall, in all things relating to the execution of the duty of such board, or of such commissioners respectively, be subject to the authority, direction, and control of the lord high treasurer and commissioners of the treasury, and shall obey all orders and instructions which shall have been or shall from time to time be issued to such board or commissioners in that behalf by the lord high treasurer, or any three or more of the commissioners of the treasury." Four commissioners shall constitute a board of excise. Their power and authority. Commissioners to be subject to the orders and control of the treasury.

§ 3. "In all cases relating to the revenue under the collection and management of the commissioners of excise, where '*England*' or '*G. B.*,' is or shall be mentioned in this act, or in any other act or acts of parliament relating to the revenue of excise, the same shall be deemed and taken to extend to and include *Wales* and the town of *Berwick-upon-Tweed;* and that where 'the U.K.' is or shall be mentioned, the same shall be deemed and taken to extend to and include *G. B.* and *Ireland*, and the islands and territories thereunto respectively belonging; and that where 'the Wales and Berwick-upon-Tweed included in all acts mentioning England or Great Britain. Definition of other terms.

7 & 8 G. 4. c. 53. revenue of excise' is or shall be mentioned, the same shall be deemed and taken to extend to and to include the whole revenue under the collection and management of the commissioners of excise; and that where any power or authority (excepting such power and authority as is restricted to the limits of the chief office of excise in *London*) is or shall be given to the commissioners of excise generally, the same shall be deemed and taken to extend over and throughout the U. K. as aforesaid; and where any power or authority is or shall be given to the commissioner or commissioners and assistant commissioners of excise in *Scotland* and *Ireland* respectively, the same shall be deemed and taken to extend only over and throughout *Scotland* or *Ireland*, and the islands and territories thereof respectively; and this act, and the several provisions thereof respectively, shall be deemed and taken to apply to all acts of parliament relating to the revenue of excise which shall hereafter be made, except in any of the above cases where the same shall be otherwise specially directed or provided."

Commissioners to appoint collectors and other subordinate officers, and to give them such salaries and allowances as the treasury shall direct.

§ 4. "It shall be lawful for the commissioners of excise, or any four or more of them, and they are hereby authorised and required from time to time to appoint, by writing under their hands and seals, such and so many collectors and other subordinate officers, and accomptants, clerks, and assistants, for collecting, receiving, managing, and accounting for the said revenue of excise, as to the said commissioners, or any four or more of them, shall seem meet and requisite, taking in the name of H. M., from them and every of them, sufficient security for the due performance of the respective duties committed to their charge; and all such commissions and appointments shall be deemed, construed, and taken to be good, valid, and effectual, and the persons holding the same shall have full power and authority, in respect thereof, to execute the duties of their respective offices, and to enforce, in the execution thereof, all laws, regulations, penalties, and forfeitures relating to the said revenue in every part of the U. K.;



warrant or warrants, order or orders, the persons to be named to every such appointment shall be submitted by the commissioners of excise to and approved by such lord high treasurer or commissioners of the treasury." 7&8G.4. c.53.

§ 5. "Provided, that all collectors and other subordinate officers, and accomptants, clerks, and assistants, who are or have been or shall be from time to time duly and legally appointed by the commissioners of excise, do and shall remain and continue in their respective offices, notwithstanding the death or removal of any commissioner or commissioners by whom they were so appointed, and notwithstanding any alteration, change, or other determination of the commission of such commissioners, until the respective appointment of such collectors or other subordinate officers, or accomptants, clerks, or assistants, shall become void by death, or shall be revoked by the commissioners of excise." Inferior officers shall continue, notwithstanding any change of the commissioners.

§ 6. "It shall be lawful for the lord high treasurer, or any three or more of the commissioners of the treasury, from time to time to order and direct any one or more of the commissioners of excise, together with two of the assistant commissioners of excise, to sit and act as such commissioner or commissioners and assistant commissioners respectively in and for *Scotland*, and to order and direct any one or more of the commissioners of excise, together with two of the assistant commissioners of excise, to sit and act as such commissioner or commissioners and assistant commissioners respectively in and for *Ireland*, for the despatch of business in those parts respectively of the U. K., under the control and direction nevertheless of the board of commissioners of excise; and that such commissioner or commissioners and assistant commissioners, for *Scotland* and *Ireland* respectively, (under such control and direction as aforesaid,) shall have and be invested with the collection and management of the revenue of excise, and all matters and things relating thereto arising in *Scotland* and *Ireland* respectively; and that any two of such commissioner or commissioners and assistant commissioners, in *Scotland* and *Ireland* respectively, shall (under such control and direction as aforesaid) have full power and authority to order and direct, and to do and permit to be done, all acts, matters, and things relating to the revenue of excise in *Scotland* and *Ireland* respectively; and that all rules, orders, acts, matters, and things which shall have been or shall be so made and done by such commissioner or commissioners and assistant commissioners, or any two of them, in *Scotland* and *Ireland* respectively, shall be good, valid, and effectual in law, to all intents and purposes whatsoever: Provided always, that all and every such commissioner or commissioners and assistant commissioners, in *Scotland* and *Ireland* respectively, shall in all things observe, perform, and fulfil, and cause to be observed, performed, and fulfilled, in and throughout *Scotland* and *Ireland* respectively, the several orders, rules, directions, and regulations, touching or relating to the said revenue, which shall have been or shall be made or given by the board of commissioners of excise." Appointment of assistant commissioners for Scotland and Ireland, under the control of the commissioners of excise.

§ 7. "No person who shall be appointed to be a commissioner or assistant commissioner of excise, or who shall be appointed to any other office relating to the revenue of excise, shall be capable of acting as such commissioner *or assistant* commissioner, or in No person shall be capable of acting in any office under the

7&8 G. 4. c. 53.

excise before he has taken the following oath.

any other such office, until he shall, before two or more justices of the peace in the county where his office is or shall be, or before one of the barons of the exchequer of *England*, *Scotland*, or *Ireland*, take and subscribe the oath hereinafter following; that is to say,

'I *A.B.* do swear to bear true allegiance to his majesty, and to 'execute the office of , to which 'I am appointed, truly and faithfully, without favour or affection; 'and that I will from time to time true account make and deliver 'to such person or persons as shall be duly appointed to receive 'the same; and that I will not take any fee or reward in or for 'the execution of the said office from any other person than H.M., 'or those whom H.M. shall appoint in that behalf.'

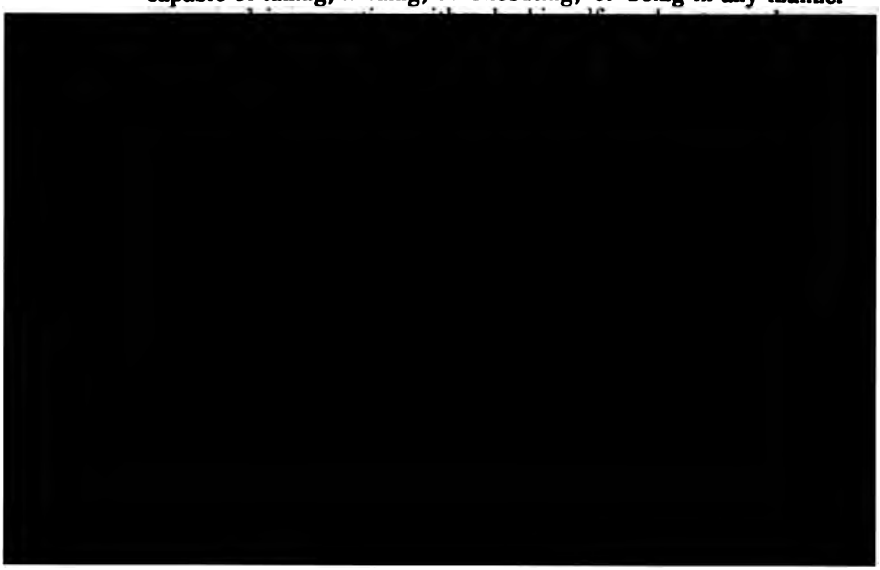
Certificate of the taking of such oath to be recorded.

And the justices of the peace, or baron of the exchequer before whom such oath as aforesaid shall have been taken and subscribed, shall certify the taking thereof as aforesaid to the general quarter-sessions, or court of exchequer, as the case may be, to be there recorded, and to the auditor of excise, by whom such certificate shall be entered; and if any person shall act as a commissioner or assistant commissioner of excise, or in any other office relating to the revenue of excise, before he shall have taken and subscribed such oath as aforesaid, such person shall, for every month in or for which he shall have so acted, without having taken such oath, forfeit and lose the sum of *50l.*"

Penalty *50l.*

No member of the House of Commons to be a commissioner or officer of excise.

§ 8. "No person being a member of the commons house of parliament shall, during the time of his being such member of parliament, be capable of being a commissioner or assistant commissioner of excise, or commissioner of appeal under this act, or of being an officer of excise, or person employed in the charging, collecting, or managing of any part of the revenue of excise, or in comptrolling or auditing the accounts thereof, nor shall be capable of taking, holding, or executing, or being in any manner



tents and purposes whatsoever; and every such commissioner, assistant commissioner, commissioner of appeal, officer, and person as aforesaid, who shall give any such vote, or who shall, by word, message, or writing, or in any other manner whatsoever, endeavour to persuade any elector to give, or to dissuade any elector from giving, his vote for the election of any person to serve in parliament, shall for every such offence (the same being proved by two or more credible witnesses upon oath) forfeit and lose the sum of 500*l.*, one moiety whereof shall be paid to the informer, and the other moiety thereof to the poor of the parish in which such offence shall have been committed and such penalty incurred; and every such penalty shall and may be recovered by any person who shall, within twelve months next after such penalty shall have been incurred, inform or sue for the same, by action of debt, bill, plaint, or information, in any of H. M.'s courts of record at *Westminster*, *Edinburgh*, or *Dublin*, in which no essoign, protection, privilege, or wager of law, nor more than one imparlance, shall be allowed; and every person convicted of any such offence shall be and is hereby declared to be incapable of ever holding or executing any office or place of trust whatsoever under H. M., his heirs or successors: Provided always, that nothing herein contained shall extend, or be deemed or construed to extend, to repeal or to alter any of the laws touching or in anywise relating to election in any part of the U. K., excepting so far as is hereby expressly provided." 7&8 G. 4. c. 53.

§ 10. "No officer of excise, or person employed in the collection or management of or accounting for the revenue of excise, or any part thereof (except the keeper of an office of excise as hereinafter mentioned), shall, whilst he shall be such officer, or so employed as aforesaid, deal or trade in any goods or commodities subject to any duty of excise, or shall carry on or be concerned in any trade or business which is or shall be under or subject to any law or laws of excise, upon pain of forfeiting for such offence, on due conviction thereof, his office or employment, and being by such conviction rendered incapable of ever holding any office, trust, or employment in or relating to the revenue of excise." No person holding any office of excise shall deal in any goods subject to the excise laws.

§ 11. "No commissioner or assistant commissioner of excise, or officer of excise, or person employed in the collection or management of or accounting for the revenue of excise, or any part thereof, shall, during the time of his acting as such commissioner or assistant commissioner or officer, or being so employed as aforesaid, be compelled to serve as a mayor or sheriff, or in any corporate or parochial or other public office or employment, or to serve on any jury or inquest, or in the militia; any law, usage, or custom to the contrary thereof notwithstanding." Commissioners and officers of excise exempted from serving in any public office, or in the militia.

§ 12. "If any commissioner or assistant commissioner of excise, or commissioner of appeal under this act, or any officer of excise, or person employed in the collection or management of or accounting for the revenue of excise, or any part thereof, shall directly or indirectly ask or demand, or take or receive any sum of money or other recompence or reward whatsoever, or any promise or security for any sum of money or other recompence or reward whatsoever, or shall make or enter into or acquiesce in any collusive agreement with any person or persons to do or to conceal or Penalty on persons employed in the excise taking money or reward, or entering into any collusive agreement contrary to their duty.

7&8G.4. c.53. to connive at any act or thing whereby any of the provisions of this act, or any other act or acts of parliament relating to the revenue of excise, shall or may be evaded or broken, or the said revenue defrauded, or to do or perform, or to permit or suffer to be done or performed, any act or thing contrary to the duty of such commissioner or assistant commissioner of excise, or commissioner of appeal, or such officer or person so employed as aforesaid, or to neglect or forbear or omit to do or perform any act or thing belonging or appertaining to the duty of such commissioner or assistant commissioner of excise, or commissioner of appeal, or officer or person so employed as aforesaid, every such commissioner or assistant commissioner of excise, or commissioner of appeal, or officer or person so employed as aforesaid, and so offending, shall for every such offence forfeit and lose the sum of 500*l*., and being thereof duly convicted, shall be thereby rendered incapable of thereafter serving H. M. in any office or employment whatsoever; and if any person shall directly or indirectly give or offer or promise to give to such commissioner or assistant commissioner of excise, or commissioner of appeal, or officer or person so employed as aforesaid, any sum of money or other recompence or reward whatsoever, or any security for any sum of money or other recompence or reward whatsoever, or shall propose or make or enter into any collusive agreement with such commissioner or assistant commissioner of excise, or commissioner of appeal, or officer or person so employed as aforesaid, in order to corrupt and prevail upon such commissioner or assistant commissioner of excise, or commissioner of appeal, or such officer or person so employed as aforesaid, to do or to conceal or to connive at any act or thing whereby any of the provisions of this act, or any other act or acts of parliament relating to the revenue of excise, shall or may be evaded or broken, or the said revenue defrauded, or to do or perform, or to permit or suffer to be done or performed, any act or thing contrary to the duty of such commissioner

Penalty on persons offering such reward, or proposing such agreement, 500*l*.



or entered into as aforesaid, and proceedings being thereupon instituted, such penalty as aforesaid shall be recovered against the person concerning whom such information shall have been given; or in case any person who shall have directly or indirectly given or offered, or promised to give, any sum of money, or other recompence or reward whatsoever, or security for the same, or who shall have proposed or made or entered into any collusive agreement as aforesaid, shall, before any complaint or information shall have been made or given, or any proceedings had against him or her for having committed such offence, give information of the asking or demanding, or of the taking or receiving as aforesaid, of any sum of money, or other recompence or reward whatsoever, or any promise or security for the same, or of any collusive agreement made or entered into or acquiesced in as aforesaid, by any such commissioner or assistant commissioner of excise, or commissioner of appeal, or officer or person so employed as aforesaid, and proceedings being thereupon instituted, such penalty as aforesaid shall be recovered against the commissioner or assistant commissioner of excise, or commissioner of appeal, or officer or person so employed as aforesaid, concerning whom such information as aforesaid shall have been given; then and in either of such cases the party so first giving information as aforesaid shall be exempted from and indemnified against the penalties and disabilities imposed on such party for such offence by this act." 7&8G.4. c.53.

§ 14. "The board of commissioners of excise shall sit at the chief office of excise established in *London*, and directed and appointed to be called 'the excise office' by an act passed in the eighth year of the reign of his late majesty King *George* the third, (amongst other things) for carrying into execution an agreement made for the purchase of *Gresham college* and the ground and buildings thereunto belonging, and for vesting the same unalienably in the crown, for the purpose of erecting and building an excise office there; or at such other place within the limits hereinafter mentioned, as the lord high treasurer, or any three or more of the commissioners of the treasury, shall in that behalf appoint; and in all cases, and to and for all intents and purposes whatsoever, the chief office of excise shall be deemed and taken to be the office of excise unto which all other offices of excise within the U.K. shall be subordinate and accountable; and that all parts of the cities of *London* and *Westminster*, the borough of *Southwark*, and the several suburbs thereof, and parishes within the weekly bills of mortality, together with the parishes of *Saint Mary-le-bone* and *Saint Pancras* in the county of *Middlesex*, shall be within and under and subject to the immediate jurisdiction of such chief office of excise." The board of commissioners of excise to sit at the chief office of excise established in London: the limits thereof.

§ 15. "An office of excise shall be held and kept in *Edinburgh* and in *Dublin* respectively; and the commissioners of excise shall appoint under their hands and seals, or under the hands and seals of any four of them, such person as they think needful in *Edinburgh* and in *Dublin* respectively, and in each such respective town throughout the U.K. in which a market is or may be legally held every week, or oftener, throughout the year, as they may think fit, and in the several towns of *Holyhead*, *Llangefni*, and Offices of excise to be held in Edinburgh and Dublin; and commissioners to appoint persons to hold offices of excise

1&8G.4. c.53.

n the market-owns of the U.K., and in certain towns in Anglesea.

Llanerchthmeth, in addition to the market-town of *Beaumaris*, in the county of *Anglesea*, to hold and keep therein, and in some known and public place thereof, an office of excise, at which all entries shall be made, (other than the entry required to be made of any building, place, vessel, or utensil for the purpose of carrying on trade or business,) and at which all duties of excise shall be received, and all other matters and things relating thereto shall be performed, as is or shall be directed by this act, or any other act or acts of parliament relating to the revenue of excise; and the person respectively so appointed (the place where he or she intends to hold or keep such office being immediately after such appointment published in full and open market, or otherwise publicly made known,) shall attend at and keep open such office during such times as are in this act or may hereafter be in that behalf directed."

Regulation of office hours and attendance, and appointment of certain days to be kept as holidays.

§ 16. "The chief office of excise in *London*, and the offices of excise in *Edinburgh* and *Dublin* respectively, shall be kept open from eight of the clock in the morning until three of the clock in the afternoon; and the office of excise in every other place shall be kept open from eight of the clock in the morning until two of the clock in the afternoon for the transaction of business, or from or to such other hours as shall from time to time be directed by the lord high treasurer, or any three or more of the commissioners of the treasury; and that no holidays whatever shall be permitted or allowed to be kept at the said chief office in *London*, or the offices in *Edinburgh* and *Dublin* respectively, or at any other office of excise, except *Christmas-day* and *Good Friday* in every year, and any days which are or shall be appointed by H.M.'s proclamation for the purpose of a general fast or thanksgiving, the anniversaries of the restoration of his majesty King *Charles* the second, and of the coronation of his majesty, and the birth-days of their majesties and of the prince of *Wales* and their respective successors, and also such days as are or shall be appointed by any warrant issued for that purpose by the lord high

commissioner of excise, or a collector or other officer of excise, or commissioned or appointed to act as such, evidence of the actual keeping of such office of excise, or that such person is, or at the time in question was reputed to be, such commissioner or assistant commissioner, or such collector or other officer, or does or did then act as such commissioner or assistant commissioner, or as such collector or other officer so commissioned and appointed (as the case may require), shall in every such case be admitted and be deemed and taken to be respectively sufficient and legal proof of such facts respectively, without producing or proving the particular commission, appointment, or other authority, whereby such person is or was commissioned or appointed to be such commissioner or assistant commissioner, or such collector or other officer as aforesaid, unless by other evidence the contrary be made to appear; any law, custom, or usage to the contrary thereof notwithstanding."

7&8 G. 4. c. 53. contrary evidence produced.

§ 22. "It shall be lawful for any officer of excise and his assistants at any time, either by night or day, (but if between the hours of eleven at night and five in the morning, then upon request, and in the presence of a constable or other lawful peace-officer, except in such cases as are otherwise specially provided for by any other act or acts of parliament relating to the revenue of excise,) to enter into and remain so long as such officer may think fit, for the purposes hereinafter mentioned, in any building or place belonging to or used by any person or persons for the purpose of carrying on any trade or business under or subject to any law or laws of excise, or belonging to or used by any person or persons making or required to make any entry of such building or place under any such law or laws; and it shall be lawful for such officer of excise and his assistants to inspect any such building or place, and to take such account (*a*) as such officer shall deem necessary, according to the several laws, provisions, and regulations relating thereto, of all matters and things, and of all works, vessels, utensils, goods, and materials belonging or in anywise appertaining to such trade or business; and it shall be lawful for such officer, and he is hereby authorised and required, to charge any duty or duties imposed by any act or acts of parliament relating to the revenue of excise which shall be then chargeable upon the person or persons carrying on such trade or business, and of such account and charge of duty to make a return or report in writing to the commissioners of excise, and to the commissioner or commissioners and assistant commissioners of excise in *Scotland* or *Ireland*, or to such person as the commissioners of excise, or the commissioner or commissioners and assistant commissioners of

Officer may enter any building or other place used for carrying on any trade subject to survey (if by night in the presence of a constable), for the purpose of inspecting the same, or taking any account, and charging the duty of excise.

(*a*) By stat. 26 *G.*3. *c.*77. § 8. If any trader subject to the survey of any officer of excise, and who is required to keep just scales and weights, shall, before or after or in weighing his stock, put or suffer to be put any other substance into the commodity so to be weighed, whereby such officer may be hindered or prevented from taking a just account thereof, or shall forcibly obstruct or hinder, or by any art, device, or contrivance, prevent or impede such officer in taking such account, he shall forfeit 100*l*.

26 G.3. c.77. Using art to deceive officers in taking the weight of stock.

And by stat. 28 *G.*3. *c.*37. § 15. All such traders who shall, in weighing their stock, make use of any false, unjust, or insufficient scales or weights, to the intent to defraud H.M. of the duties, shall forfeit the same, which may be seized by any officer of excise.

28 G.3. c.37. False scales and weights may be seized.

7&8G.4. c.53.

excise in *Scotland* and *Ireland* respectively may direct; officer, in all cases where the minutes of the entries made by in taking such account shall not appear on any such specimen as hereinafter mentioned, giving (if demand be made there writing at the time of taking such account) a true copy of charge, in writing under his hand, to the person or persons ca ing on such trade or business; and every such return and re of such officer as aforesaid shall be and shall be taken to charge of such duty or duties upon such person or persons."

Specimen books may be left by the officers on the premises of traders, and not to be removed or destroyed, under penalty of 200*l*.

§ 23. "The supervisor or surveyor of excise in whose distri division any person or persons shall be who shall carry on trade or business under or subject to any law or laws of excis the officer of excise under whose survey such person or pe shall be, may leave and deposit, in some conspicuous and part of some building or place entered by such person or pe for such trade or business, a certain book or paper called a cimen, for recording therein minutes of the entries made b officers respectively who survey the premises of such perso persons, or the trade or business of such person or persons, i books of such officers, of the state of the manufactory, and o accounts and particulars of the survey thereof, at any time t by such officers respectively, and the names and minutes of su and observations of any other officer who may visit or inspect entered premises; and every officer of excise shall at all t have free access to such book or paper, with liberty and pow remove or take away the same, leaving a new book or pape the like purpose as aforesaid in lieu thereof; and if any pe not being an officer of excise, shall remove or take away, or conceal or withhold any such book or paper, or shall dama destroy the same, or alter, deface, or obliterate any entry the or shall make any entry therein, every such person so offen shall for every such offence forfeit and lose the sum of 200*l*."

Commissioners in Scotland and

§ 44. "The commissioner or commissioners and assistant

misdemeanor, and shall suffer the punishment of fine and imprisonment, at the discretion of the court in which such offender shall be prosecuted for such offence, and shall by such conviction be rendered for ever incapable of holding or enjoying any office under the crown." 7&8G. 4. c. 53.

§ 45. "The commissioner or commissioners and assistant commissioners of excise in *Scotland* or *Ireland* respectively, and every collector, receiver or other person throughout the U. K. intrusted with the collection, receipt, custody, or management of any part of the revenue of excise, shall from time to time collect, receive, apply, pay, transfer, and remit all and every duty and duties, penalty and penalties, sum and sums, and balance and balances of money, which shall at any time be intrusted to his or their care or custody, or come into his or their hands, or be under his or their control and management respectively, in such manner and form, and at such times as the commissioners of excise shall in that behalf from time to time order and direct; and if any commissioner or assistant commissioner of excise in *Scotland* or *Ireland*, or if any such collector, receiver, or other person in any part of the U. K., shall neglect or omit so to collect, receive, apply, pay, transfer, or remit as aforesaid, any such duty or penalty, or sum or balance of money, or any security for money, in his or their hands, or shall detain or misapply the same, every such commissioner, assistant commissioner, collector, receiver, or other person so offending, shall forfeit his office or employment, and shall be liable to pay, over and above the penalty of any bond which he may have entered into in respect of his office or employment, treble the amount of such duty or penalty, or sum or balance of money, or security for money, neglected or omitted so to be collected, received, applied, paid, transferred, or remitted as aforesaid, or so detained or misupplied." Collectors to receive, pay, apply, and remit duties, as ordered by commissioners.

§ 46. "The commissioners of excise shall and they are hereby required to collect and cause to be collected all and every the duties and every part of the revenue of excise, and to keep separate and distinct accounts thereof respectively at the chief office of excise in *London;* and shall set forth in such accounts the amounts respectively charged, and collected, and received, and remaining in arrear of each of such duties, and other parts respectively of the said revenue, and of the several payments made or allowed by such commissioners for or in respect of such duties and other parts of the said revenue respectively, and of the expenses respectively of the collection or management of the revenue of excise, and of all other payments and expenses made or incurred on any other account whatsoever; and the said commissioners of excise shall render and furnish such accounts as aforesaid to the lord high treasurer or the commissioners of the treasury, when and so often and in such manner and form as the same shall be directed or required by the lord high treasurer, or any three or more of the commissioners of the treasury." Commissioners to collect and keep accounts of the duties of excise charged or received, and of payments made, and render such accounts to the treasury when required.

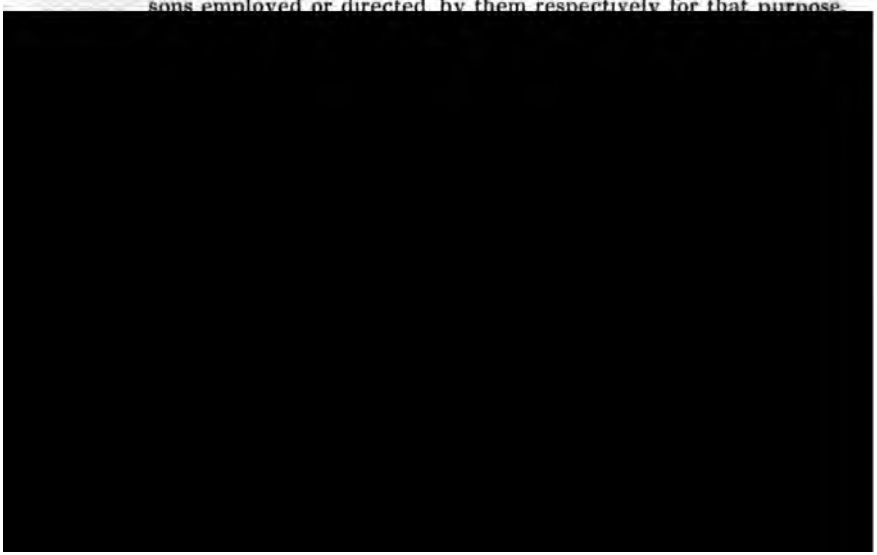
§ 47. "The commissioners of excise shall daily pay or cause to be paid into the hands of the receiver-general of excise in *England*, or in such other manner as the lord high treasurer, or any three or more of the commissioners of the treasury, shall from time to time direct, order, or appoint, all money, and shall indorse and Commissioners to pay over the revenue of excise to the receiver-general.

&8G.4. c.58.

deliver over or transfer to such receiver-general, or in such other manner as aforesaid, all bills of exchange, promissory notes, drafts, checks, or orders for the payment of money which shall from time to time be collected or received by, or paid or transmitted to such commissioners, for or on account of the duties or revenue of excise, (except only the necessary charges paid of collecting, receiving, levying, managing, paying, and accounting for the same, and all other payments legally made thereout); and if any commissioner of excise shall fraudulently or knowingly and wilfully detain or misapply any money, bill of exchange, promissory note, draft, check, or order for the payment of money as aforesaid, or any part thereof, or any security for money, every such commissioner so offending shall forfeit his office, and shall be rendered incapable of serving H. M., his heirs or successors, in any office or place of profit or trust whatsoever, and shall also forfeit and lose treble the amount of every sum of money, bill, note, draft, check, or order for the payment of money, or security for money, so detained or misapplied as aforesaid."

Salaries and superannuation allowances not liable to any deductions, or assignable, or subject to be taken in execution.

§ 121. "No salary or sum of money granted or allowed to any commissioners, assistant commissioners, officer, or other person appointed or to be appointed to any office, or employed, or to be employed in or about the collection, receipt, or management of the revenue of excise, or as or by way of compensation for past services, upon the superannuation or retirement of such commissioner, assistant commissioner, officer, or other person, or otherwise, shall, after the commencement of this act, be wholly or in part assignable or transferable by any such commissioner, assistant commissioner, officer, or other person in manner whatsoever, or subject or liable to be seized or taken under or by virtue of any writ of attachment or execution, or any other process whatsoever, before the same shall have been actually paid by the commissioners of excise or the commissioner or commissioners and assistant commissioners of excise in *Scotland* and *Ireland* respectively, or by the person or persons employed or directed by them respectively for that purpose.



In order to which, he who would be made an excise officer must procure a certificate that he is above 21 and under 30 years of age; that he understands the four first rules of arithmetic; that he is of the communion of the church of *England;* how he has been employed, or what business he hath followed; that he is not incumbered with debts; whether single or married; and if married, how many children he has, for if he has above two he cannot (by the rules of the office) be admitted. *Gilb. Exch.* Append. 293.

Certificate for obtaining an order to be instructed in the excise.

He must also nominate two persons to be his sureties, and it must be certified that they are of sufficient ability, and that the said certificate is of his own handwriting; such certificate, written by him, must be signed by the supervisor of excise where the party applying lives. *Gilb. Exch.* Append. 293.

Security to be proposed.

At the bottom of the certificate must be his affidavit, that neither he nor any one else to his knowledge hath directly or indirectly given or promised to give any treat, fee, gratuity, or reward for his obtaining or endeavouring to obtain an order for his being instructed. *Id.* 294.

Affidavit.

When an order for instructing is granted, it is directed to an experienced officer, who receives such person as his pupil; and the like books as officers have being delivered to such pupil, he goes with and attends the officer, who instructs him and takes surveys, and in his own books makes the like entries as if he were an officer, until the instructor certifies that he is fully instructed. *Id.*

Order for instruction, and certificate thereon.

After he is thus certified for, and until he is employed, he is called an *Expectant*, being to wait till a vacancy happens. *Id.*

Expectant.

The business of the *Supervisor* is, to be continually surveying the houses and places of the persons within his district liable to duties; and to observe and see whether the officers duly make their surveys, and make due entries thereof in their books and in their specimen papers; and every supervisor is in his own book to enter what himself does each day and part thereof; and also to set down the behaviour, good or bad, the diligence or negligence of the several officers of his district; and at the end of every six weeks to draw out a diary of every day's business, and of the remarks made each day of the several officers in his district, and to transmit such diary at the end of every six weeks to the chief office. *Gilb. Exch.* Append. 303, 304.

Officer's general duty.

Supervisors to make diaries, and transmit them to the chief office.

Each commissioner takes and peruses a proportion of these diaries, and when he meets with any remarkable complaint against any officer, he communicates it to the rest; who thereupon come to an agreement, either to *admonish*, *reprimand*, *reduce*, or *discharge*. For small faults, officers are admonished; for great ones reprimanded; for greater, reduced; but for the greatest, they are discharged. The commissioner who peruses the diary writes in the margin, *admonish* or *reprimand*, &c. as is agreed on by the board. *Gilb. Exch.* App. 304.

The duty and authority of the commissioners in reprimanding and punishing officers guilty of neglect.

These diaries, after having been thus written upon, are delivered to the clerk of the diaries, who, in a book called the *reprimand-book*, places the admonitions, reprimands, &c. to each officer's account, and writes every offender word thereof; which reprimand-book is resorted to, upon discovering new faults; and if it be there found that the officer has before been admonished and reprimanded so often that there are no hopes of his amending, he then is discharged. The said book *is likewise* resorted to when

Business of the clerk of the diaries, with the form and use of the reprimand-book.

application is made for advancing or preferring an officer into a better post. Frequent admonitions or reprimands are a bar to preferment, unless they are of old standing; but if for three years last he stands pretty clear of admonitions and reprimands, those of elder date are not much regarded. *Gilb. Exch.* App. 305.

The business of collectors.

The *collector*'s business is, every six weeks, to go his rounds; and in the intervals of rounds, he is to be assisting in prosecuting offenders before justices; he is also to peruse the supervisor's diaries, and where he finds an officer complained of, is to examine him and the supervisor, and, having heard both, is in the margin to write his opinion of each fact; he is also to have an eye how the supervisors and officers of his collection perform their duties; and from the vouchers he transcribes into his book the charge on each particular person in his collection. *Id.* 305, 306.

The manner of reducing officers for faults.

For faults, gaugers are *reduced* either to be only assistants, or from foot-walks to out-rides. Supervisors are reduced to be again only gaugers; and collectors are reduced to be supervisors. *Id.*

The manner of discharging and restoring officers.

In some instances, discharged officers, after having for a competent time been thereby kept out of pay, are again restored; but if twice discharged are never again restored, unless one of the discharges appears to have been occasioned upon a misrepresentation of the case. *Id.* 307.

§ II. (b.) Entries.

7&8G.4. c.53. In what manner the entry of premises, &c. subject to the survey of the excise shall be made.

By stat. 7 & 8 *G.* 4. *c.* 53. § 18. "All and every person or persons required to make entry of any building, place, vessel, or utensil, under this act, or any other act or acts of parliament relating to the revenue of excise, shall deliver such entry, with his or their signature thereto, to the officer of excise in whose survey such building, place, vessel, or utensil shall be intended to be used; and such officer shall copy such entry into the book kept and known by the name of the general entry-book, for the division or ride in which such building, place, vessel, or utensil shall be intended to be used; and the supervisor of the district shall examine and compare the copy so made in such book as aforesaid with the original entry; and such officer, upon his being removed from such division or ride, shall deliver over to the officer succeeding him in such station such book, and all such original entries."

What shall be sufficient proof of such entry.

§ 19. "Where, upon the trial of any indictment, information, action, suit, or prosecution, or upon any other legal or judicial proceeding whatsoever, any such original entry shall be tendered or offered in evidence, it shall be lawful to prove by any credible witness the signature or signatures to such entry to be the handwriting of the person or persons by whom or in whose name or names such entry was made; and in any such case it shall not be necessary to prove such entry by the testimony of the officer who received, or of the person who may have attested such signature or signatures, or the receipt of such entry; and if upon any trial as aforesaid, or upon any other legal or judicial proceeding, any question shall be made or shall arise, whether any building or place, or any vessel or utensil, of which entry is required to be made under this act, or any other act or acts of parliament relating to the revenue of excise, was entered by the person or persons by whom the same shall have been used, it shall be deemed and taken to be sufficient proof of such entry, if upon the production of any credible witness

of the entry-book of the division or ride in which such building, place, vessel, or utensil shall have been used, such building, place, vessel, or utensil shall be found, or shall appear in the copy, or what shall purport to be the copy in such book of any entry thereof, made by such person or persons as aforesaid; and if, upon the production of such book, no such building, place, vessel, or utensil shall be found, or shall so appear therein, or if found shall so appear to have been entered for another or different purpose than the purpose for which the same shall be charged or alleged to have been used by such person or persons, every such building, place, vessel, or utensil shall be deemed and taken to be and unentered to all intents and purposes whatsoever, unless by other evidence the contrary be made appear; any law, custom, or usage to the contrary thereof notwithstanding: Provided always, that where in any indictment or information it shall be averred that any person or persons was or were a trader or traders under any law or laws of excise, it shall not be necessary to prove the same by the production or proof of any entry made by or in the name of such person or persons." 7&8 G. 4. c. 53.

§ 20. "No entry of any building, place, vessel, or utensil, made by any person or persons under any act or acts of parliament relating to the revenue of excise, shall be or be deemed or taken to be a legal entry thereof, unless the same shall have been made by and be in the name or names of a person or persons who shall, at the time of making such entry, have attained the age of twenty-one years, and who shall be the true and real owner or owners of the trade or business therein or thereby carried on, or in respect of which such entry of such building, place, vessel, or utensil shall have been made: Provided always, that the person or persons who shall act as the visible owner or owners of any trade or business in respect of which any such entry shall have been made, or by whom the same respectively shall be occupied or used, or who shall have the principal management thereof, shall in all respects, and notwithstanding the minority of such visible owner or owners, be subject and liable to all duties, penalties, and forfeitures imposed by this act, or any other act or acts of parliament relating to the revenue of excise, or any part thereof, to which the real owner or owners of such building, place, vessel, or utensil, or of such trade or business therein or thereby carried on, would have been liable; and all stock in such trade or business, and all materials, vessels, and utensils which shall then and there be found in or upon such building or place, to whomsoever the same shall then and there belong, shall be subject to and be charged with all such duties, penalties, and forfeitures." No entry shall be legal except in the name of the real owner; but the ostensible owner shall be liable.

§ 21. "Every person making entry of any building, place, vessel, or utensil under any act or acts of parliament relating to the revenue of excise, shall in every such entry distinguish and describe every such building, place, vessel, or utensil, by a particular letter or number, and shall, to the satisfaction of the supervisor or surveyor of the district or division, paint such respective letter or number in a large and distinct character upon some convenient and conspicuous part of the outside of the walls or doors of every such building and place, and upon some convenient and conspicuous part of the outside of every such vessel and utensil, and shall continue the same so painted, and from time to time and when occasion In the entry of premises, vessels, &c. the same to be distinguished by letters or numbers, and fixed pipes to be painted, under penalty of 100*l.*

7&8G.4. c.53. shall require, or when requested by the supervisor or surveyor of excise of the district or division, shall renew the same, so long as the entry thereof shall remain uncancelled, so that such letter or number so painted may be easily and distinctly observed and known by the officers of excise; and wherever any such person shall use or employ, in any entered building or place, any fixed pipe, every such person, when required by the supervisor or surveyor of excise, by a written notice, shall paint and continue painted every such pipe, throughout its whole length and over its whole exterior surface, with a distinct oil-colour or oil-colours, to the satisfaction of the supervisor or surveyor of excise of the district or division; and every such person, after such notice, shall also deliver, in addition to the entry required to be made by such person of any such building, place, vessel, or utensil, and as part thereof, a drawing or drawings, or description, distinctly showing or exhibiting and explaining the course, direction, construction, and use of every such pipe respectively, and of every branch thereof, and of every cock therein, together with every place, vessel, and utensil respectively, from and to or with which the same shall lead or communicate; provided always, that all pipes or parts of pipes used for the same purpose only, shall be painted of the same colour; and if any such person shall use any building, place, vessel, or utensil, by him or her entered, which shall not be so distinguished and described as aforesaid, or which shall not have such letter or number so painted and continued thereon as aforesaid, or shall use any fixed pipe in any building or place so entered, which shall not be so painted, and so shown or exhibited and explained in any drawing or drawings, or description, or different from or disagreeing with any drawing or description by him or her delivered thereof, every such person using such building, place, vessel, utensil, or pipe as aforesaid, shall for every such offence forfeit and lose, over and above all other penalties, the sum of 100*l.*"

No person compelled to go further than the next market-town for making entries or payment of duties.

§ 26. "No person who shall carry on trade or business in any such market-town as aforesaid, or in any such other town as hereinbefore specified, shall be compelled to travel out of such market-town or other town, for the purpose of paying any duty of excise, or of making any entry; (other than the entry required to be made of any building, place, vessel, or utensil for the purpose of carrying on trade or business;) and no person who shall carry on trade or business out of any such market-town, or other town as aforesaid, shall be compelled to travel to any other place than such market-town, or other town as aforesaid, next to the place for or at which such duty shall have been charged, or such entry (other than as aforesaid) is required to be made for the purpose of paying such duty or making such entry."

Persons found employed in unentered excise manufactories liable to fine and imprisonment.

§ 33. "When any officer of excise shall at any time find in any private or unentered place manufacturing, or in the course of manufacturing, any goods or commodities for or in respect whereof any duty of excise is or shall be imposed, or any materials or preparations for manufacturing any such goods or commodities, and shall at the same time discover in or about such private or unentered place any person knowingly aiding, assisting, or in anywise concerned in the manufacturing of such goods or commodities,

Penalty 30*l.* every person so discovered shall forfeit and lose the sum of 30*l.*,

over and above all other penalties to which the proprietor of the same, or the person in whose custody or possession the same shall be found, or by whom the manufacturing of such goods or commodities may be carrying on, is or may be subject and liable; and it shall be lawful for any officer of excise, and all persons acting in his aid and assistance, to arrest and detain every person so discovered, and to convey him or her before one or more justice or justices of the peace for the county, shire, division, city, town, or place wherein such person shall be so discovered as aforesaid; and it shall be lawful to and for such justice or justices of the peace, on confession of the party, or by proof on the oath of one or more credible witness or witnesses made of such offence, to convict every such person so discovered as aforesaid; and every person so convicted shall, immediately on such conviction, pay the said sum of 30*l.* into the hands of the officer who shall have conveyed such offender before such justice or justices of the peace, to be paid to the commissioners of excise, or the commissioner or commissioners and assistant commissioners of excise in *Scotland* or *Ireland* respectively, or to such person or persons as they may respectively appoint, to be applied in such manner as other excise penalties are by this act directed to be applied; and on any such offender refusing or neglecting to pay the said sum of 30*l.*, the justice or justices so convicting as aforesaid shall and may, by warrant or warrants under his or their hand or hands, commit the said offender to the house of correction or other prison for the said county, shire, division, city, town, or place respectively, there to remain and be kept to hard labour for the space of three calendar months, to be reckoned from the day of such conviction, and the person so convicted and committed shall not under any pretence, or by reason of any authority or order other than as hereinafter mentioned, be discharged until he or she shall have paid the said sum of 30*l.*, or until the expiration of the said three months; and in case any person so convicted shall be again discovered in or about any private or unentered place or places, manufacturing or in the course of manufacturing any goods or commodities for or in respect whereof any duty of excise is or shall be imposed, or any materials or preparations for manufacturing such goods or commodities, or aiding or assisting or in anywise concerned in manufacturing such goods or commodities, such person so again offending shall upon the like conviction forfeit and pay for such further offence the sum of 60*l.*, and shall be committed to the house of correction or other prison in manner aforesaid, there to remain as aforesaid for and during the term of six months, or until the said sum of 60*l.* shall be paid: Provided always, that in any such case of imprisonment, it shall be lawful for the commissioners of excise, or for the commissioner or commissioners and assistant commissioners of excise in *Scotland* and *Ireland* respectively, to order any person so imprisoned to be discharged at any time before the term of his or her imprisonment shall have expired." 7&8 G. 4. c. 53. Second offence, penalty 60*l.*

§ II. (c) Duties.

By stat. 7 & 8 *G.* 4. *c.* 53. § 25. "Every person carrying on any trade or business, under or subject to any law or laws of excise, shall pay and clear off the duty or duties in that behalf imposed by any Excise traders shall pay their duties at such

application is made for advancing or preferring an officer into a better post. Frequent admonitions or reprimands are a bar to preferment, unless they are of old standing; but if for three years last he stands pretty clear of admonitions and reprimands, those of elder date are not much regarded. *Gilb. Exch.* App. 305.

The business of collectors.

The *collector*'s business is, every six weeks, to go his rounds; and in the intervals of rounds, he is to be assisting in prosecuting offenders before justices; he is also to peruse the supervisor's diaries, and where he finds an officer complained of, is to examine him and the supervisor, and, having heard both, is in the margin to write his opinion of each fact; he is also to have an eye how the supervisors and officers of his collection perform their duties; and from the vouchers he transcribes into his book the charge on each particular person in his collection. *Id.* 305, 306.

The manner of reducing officers for faults.

For faults, gaugers are *reduced* either to be only assistants, or from foot-walks to out-rides. Supervisors are reduced to be again only gaugers; and collectors are reduced to be supervisors. *Id.*

The manner of discharging and restoring officers.

In some instances, discharged officers, after having for a competent time been thereby kept out of pay, are again restored; but if twice discharged are never again restored, unless one of the discharges appears to have been occasioned upon a misrepresentation of the case. *Id.* 307.

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of the entry-book of the division or ride in which such building, place, vessel, or utensil shall have been used, such building, place, vessel, or utensil shall be found, or shall appear in the copy, or what shall purport to be the copy in such book of any entry thereof, made by such person or persons as aforesaid; and if, upon the production of such book, no such building, place, vessel, or utensil shall be found, or shall so appear therein, or if found shall so appear to have been entered for another or different purpose than the purpose for which the same shall be charged or alleged to have been used by such person or persons, every such building, place, vessel, or utensil shall be deemed and taken to be and unentered to all intents and purposes whatsoever, unless by other evidence the contrary be made appear; any law, custom, or usage to the contrary thereof notwithstanding: Provided always, that where in any indictment or information it shall be averred that any person or persons was or were a trader or traders under any law or laws of excise, it shall not be necessary to prove the same by the production or proof of any entry made by or in the name of such person or persons." 7&8G.4. c.53.

§ 20. "No entry of any building, place, vessel, or utensil, made by any person or persons under any act or acts of parliament relating to the revenue of excise, shall be or be deemed or taken to be a legal entry thereof, unless the same shall have been made by and be in the name or names of a person or persons who shall, at the time of making such entry, have attained the age of twenty-one years, and who shall be the true and real owner or owners of the trade or business therein or thereby carried on, or in respect of which such entry of such building, place, vessel, or utensil shall have been made: Provided always, that the person or persons who shall act as the visible owner or owners of any trade or business in respect of which any such entry shall have been made, or by whom the same respectively shall be occupied or used, or who shall have the principal management thereof, shall in all respects, and notwithstanding the minority of such visible owner or owners, be subject and liable to all duties, penalties, and forfeitures imposed by this act, or any other act or acts of parliament relating to the revenue of excise, or any part thereof, to which the real owner or owners of such building, place, vessel, or utensil, or of such trade or business therein or thereby carried on, would have been liable; and all stock in such trade or business, and all materials, vessels, and utensils which shall then and there be found in or upon such building or place, to whomsoever the same shall then and there belong, shall be subject to and be charged with all such duties, penalties, and forfeitures." No entry shall be legal except in the name of the real owner; but the ostensible owner shall be liable.

§ 21. "Every person making entry of any building, place, vessel, or utensil under any act or acts of parliament relating to the revenue of excise, shall in every such entry distinguish and describe every such building, place, vessel, or utensil, by a particular letter or number, and shall, to the satisfaction of the supervisor or surveyor of the district or division, paint such respective letter or number in a large and distinct character upon some convenient and conspicuous part of the outside of the walls or doors of every such building and place, and upon some convenient and conspicuous part of the outside of every such vessel and utensil, and shall continue the same so painted, and *from time to time* and when occasion In the entry of premises, vessels, &c. the same to be distinguished by letters or numbers, and fixed pipes to be painted, under penalty of 100*l.*

7&8G.4. c.53. shall require, or when requested by the supervisor or surveyor of excise of the district or division, shall renew the same, so long as the entry thereof shall remain uncancelled, so that such letter or number so painted may be easily and distinctly observed and known by the officers of excise; and wherever any such person shall use or employ, in any entered building or place, any fixed pipe, every such person, when required by the supervisor or surveyor of excise, by a written notice, shall paint and continue painted every such pipe, throughout its whole length and over its whole exterior surface, with a distinct oil-colour or oil-colours, to the satisfaction of the supervisor or surveyor of excise of the district or division; and every such person, after such notice, shall also deliver, in addition to the entry required to be made by such person of any such building, place, vessel, or utensil, and as part thereof, a drawing or drawings, or description, distinctly showing or exhibiting and explaining the course, direction, construction, and use of every such pipe respectively, and of every branch thereof, and of every cock therein, together with every place, vessel, and utensil respectively, from and to or with which the same shall lead or communicate; provided always, that all pipes or parts of pipes used for the same purpose only, shall be painted of the same colour; and if any such person shall use any building, place, vessel, or utensil, by him or her entered, which shall not be so distinguished and described as aforesaid, or which shall not have such letter or number so painted and continued thereon as aforesaid, or shall use any fixed pipe in any building or place so entered, which shall not be so painted, and so shown or exhibited and explained in any drawing or drawings, or description, or different from or disagreeing with any drawing or description by him or her delivered thereof, every such person using such building, place, vessel, utensil, or pipe as aforesaid, shall for every such offence forfeit and lose, over and above all other penalties, the sum of 100*l*."

§ 86. "No person who shall carry on trade or business in any



over and above all other penalties to which the proprietor of the same, or the person in whose custody or possession the same shall be found, or by whom the manufacturing of such goods or commodities may be carrying on, is or may be subject and liable; and it shall be lawful for any officer of excise, and all persons acting in his aid and assistance, to arrest and detain every person so discovered, and to convey him or her before one or more justice or justices of the peace for the county, shire, division, city, town, or place wherein such person shall be so discovered as aforesaid; and it shall be lawful to and for such justice or justices of the peace, on confession of the party, or by proof on the oath of one or more credible witness or witnesses made of such offence, to convict every such person so discovered as aforesaid; and every person so convicted shall, immediately on such conviction, pay the said sum of 30*l.* into the hands of the officer who shall have conveyed such offender before such justice or justices of the peace, to be paid to the commissioners of excise, or the commissioner or commissioners and assistant commissioners of excise in *Scotland* or *Ireland* respectively, or to such person or persons as they may respectively appoint, to be applied in such manner as other excise penalties are by this act directed to be applied; and on any such offender refusing or neglecting to pay the said sum of 30*l.*, the justice or justices so convicting as aforesaid shall and may, by warrant or warrants under his or their hand or hands, commit the said offender to the house of correction or other prison for the said county, shire, division, city, town, or place respectively, there to remain and be kept to hard labour for the space of three calendar months, to be reckoned from the day of such conviction, and the person so convicted and committed shall not under any pretence, or by reason of any authority or order other than as hereinafter mentioned, be discharged until he or she shall have paid the said sum of 30*l.*, or until the expiration of the said three months; and in case any person so convicted shall be again discovered in or about any private or unentered place or places, manufacturing or in the course of manufacturing any goods or commodities for or in respect whereof any duty of excise is or shall be imposed, or any materials or preparations for manufacturing such goods or commodities, or aiding or assisting or in anywise concerned in manufacturing such goods or commodities, such person so again offending shall upon the like conviction forfeit and pay for such further offence the sum of 60*l.*, and shall be committed to the house of correction or other prison in manner aforesaid, there to remain as aforesaid for and during the term of six months, or until the said sum of 60*l.* shall be paid: Provided always, that in any such case of imprisonment, it shall be lawful for the commissioners of excise, or for the commissioner or commissioners and assistant commissioners of excise in *Scotland* and *Ireland* respectively, to order any person so imprisoned to be discharged at any time before the term of his or her imprisonment shall have expired."

7&8 G. 4. c. 53.

Second offence, penalty 60*l.*

§ II. (c) Duties.

By stat. 7 & 8 *G.* 4. *c.* 53. § 25. "Every person carrying on any trade or business, under or subject to any law or laws of excise, shall pay and clear off the duty or duties in that behalf imposed by any

Excise traders shall pay their duties at such

7&8 G. 4. c. 53.

time and place as shall be appointed, or upon demand made by order of the commissioners, under pain of forfeiting double such duties.

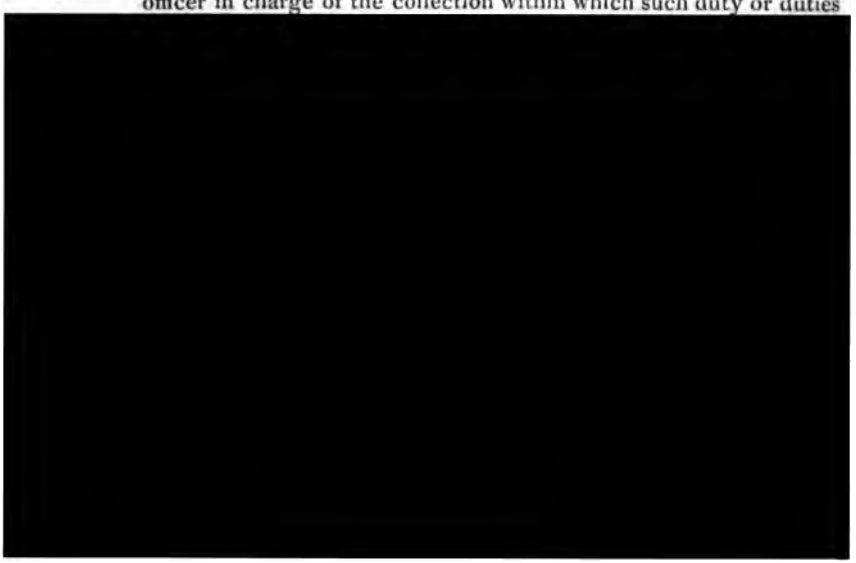
act or acts of parliament respectively in such case made and provided, and charged upon or incurred by such person, at such time and place and to such person respectively as shall for that purpose be specially directed in any act or acts of parliament relating to such duties respectively, or as shall be from time to time directed by the commissioners of excise; and if any such person shall not pay and clear off such duty or duties at such time and place, and to such person respectively as aforesaid, or upon demand thereof made (under order of the commissioners of excise or of the commissioner or commissioners and assistant commissioners of excise in *Scotland* and *Ireland* respectively) by the collector of excise in whose collection such trade or business shall be carried on, or by any officer authorised and directed by such collector, under such order as aforesaid, to make such demand, (whether such demand be made personally of any person who shall have incurred such duty or duties, or shall be left at the dwelling-house of any such person, or on the premises where such duty or duties shall have been charged or incurred,) every such person shall forfeit and lose double the value of the duty or duties so neglected to be paid and cleared off as aforesaid."

No person to be compelled to go further than the next market-town to pay duties.

§ 26. "No person who shall carry on trade or business in any such market-town as aforesaid, or in any such other town as before mentioned, shall be compelled to travel out of such town for the purpose of paying any duty of excise. And no person who shall carry on trade or business out of any such market, or other town, shall be compelled to travel to any other place than such market or other town next to the place for or at which such duty shall have been charged for the purpose of paying such duty."

Collectors may issue warrants to levy in Scotland or Ireland duties in danger of being lost.

§ 27. "In all cases in *Scotland* or *Ireland* where any duties of excise charged upon or payable by any person or persons shall be unpaid, and shall be in danger of being lost to H. M., unless immediate proceedings are taken for the recovery of such duty or duties, it shall be lawful for the collector of excise, or other officer in charge of the collection within which such duty or duties



carrying on any trade or business under or subject to any law or laws of excise, and on or by whom such duties shall have been charged or become payable, and for the enforcement of all penalties incurred by any person or persons for any offences committed against this act, or any other act or acts of parliament relating to the revenue of excise; it is enacted, that all goods and commodities for or in respect whereof any duty or duties of excise is, are, or shall be by law imposed, and all materials, preparations, utensils, and vessels for the making thereof, or by which any such trade or business shall have been carried on, in the custody or possession of the person or persons carrying on such trade or business, or in the custody or possession of any other person or persons, to the use of or in trust for the person or persons carrying on such trade or business, shall be and remain subject and liable to, and the same are hereby made chargeable with all the duties of excise which, during the time of any such custody or possession, shall be charged or become chargeable, or be in arrear or owing from or by the person or persons carrying on such trade or business for or in respect of the same, or of any such or the like goods and commodities respectively; and shall also be and remain subject and liable to all penalties and forfeitures which, during any such custody or possession, shall be incurred by the person or persons carrying on such trade or business, for any offences by such person or persons committed against this act, or any other act or acts of parliament relating to the revenue of excise; and all such goods, commodities, materials, preparation, utensils, and vessels shall be and remain subject and liable to all such duties, penalties, and forfeitures, into whose hands soever the same shall afterwards come, or by what conveyance or title soever the same shall be claimed; and it shall be lawful in all such cases to levy thereupon such duties, penalties, and forfeitures, and to use such proceedings for the recovery or enforcement of such duties, penalties, and forfeitures respectively, as may lawfully be done in cases where the debtors or offenders are the true and lawful owners of such goods, commodities, materials, preparations, utensils, or vessels."

7&8G.4. c.53. duty, and the materials, vessels, &c. to be subject to arrears of duty, penalties, &c.

§ II. (d) Removing Goods to avoid Duty.

By 7 & 8 G. 4. c. 53. § 32. "In case any goods or commodities for or in respect whereof any duty of excise is or shall be imposed, or any materials, utensils, or vessels proper or intended to be made use of for or in the making of such goods or commodities, shall be removed, or shall be deposited or concealed in any place, with any intent to defraud H. M. of such duty, or any part thereof, all such goods and commodities, and all such materials, utensils, and vessels respectively, shall be forfeited; and in every such case, and in every case where any goods or commodities shall be forfeited under this act, or any other act or acts of parliament relating to the revenue of excise, all and singular the casks, vessels, cases, or other packages whatsoever, containing or which shall have contained such goods or commodities respectively, and every vessel, boat, cart, carriage, or other conveyance whatsoever, and all horses or other cattle, and all things used in the removal or for the deposit or concealment thereof respectively, shall be forfeited; and every

7&8G.4. c.53. Goods fraudulently removed or deposited to evade the duty shall be forfeited, as also the packages or conveyances used for containing or removing the same.

'&8G.4. c.53.

Penalty treble he value, or 100*l*.

person who shall remove, deposit, or conceal, or be concerned in removing, depositing, or concealing, any goods or commodities for or in respect whereof any duty of excise is or shall be imposed, with intent to defraud H. M. of such duty, or any part thereof, shall forfeit and lose treble the value of all such goods and commodities, or the sum of 100*l*., at the election of the commissioners of excise or customs, or of the commissioner or commissioners and assistant commissioners of excise or customs in *Scotland* and *Ireland* respectively, or the person who shall inform or sue for the same."

§ II. (e) Obstructing Officers.

Penalty on hindering officers, &c. in the execution of their duty.

By stat. 7 & 8 *G.* 4. *c.* 53. § 24. "If any person shall oppose, molest, obstruct, or hinder any officer of excise, or any person employed in the revenue of excise, or acting in the aid or assistance of any officer or person so employed, in the due execution of this act, or any other act or acts of parliament relating to the revenue of excise, or in the execution of any of the powers or authorities by this act, or any such act or acts given or granted to such officer or person so employed, every person so offending shall for every such offence forfeit and lose the sum of 200*l*."

Persons obstructing officers, &c. in making seizures, or rescuing the same, or destroying the packages, to forfeit 200*l*.

§ 39. "If any person shall molest, obstruct, or hinder any officer of excise, or any person employed in the revenue of excise, or acting in aid and assistance of such officer or person so employed as aforesaid, in the search, examination, seizure, detention, or removal of any goods or commodities, or any vessel, boat, cart, carriage, or other conveyance, or any horse or cattle, or any other thing whatsoever forfeited under or by virtue of this act, or any other act or acts of parliament relating to the revenues of excise or customs, or in the due execution of his office or duty respectively in that behalf, or shall after any such officer or person so employed, or person acting in such aid and assistance as aforesaid, shall have made any such seizure as aforesaid, rescue or cause the



cattle, or other thing used in the removal of any such goods or commodities, or who shall arrest or endeavour or offer to arrest any person carrying, removing, or concealing the same, or employed or concerned therein, and liable to such arrest, then and in every such case it shall be lawful for every such officer and person so employed, and person acting in such aid and assistance as aforesaid, who shall be so assaulted or resisted, to oppose force to force, and by the same means and methods by which he is so assaulted or resisted, or by any other means or methods, to oppose such force and violence, and to execute his office or duty; and if any person so assaulting or resisting such officer as aforesaid, or any person so employed, or any person acting in such aid and assistance as aforesaid, shall in so doing be wounded, maimed, or killed, and the said officer or person so employed, or person acting in such aid and assistance as aforesaid, shall be sued or prosecuted for any such wounding, maiming, or killing, it shall be lawful for every such officer or person so employed, or person acting in such aid and assistance, to plead the general issue, and give this act and the special matter in evidence in his defence; and it shall be lawful for any justice or justices of the peace, or other magistrate or magistrates before whom any such officer or person so employed, or person acting in such aid and assistance as aforesaid, shall be brought, for or on account of any such wounding, maiming, or killing as aforesaid, and every such justice of the peace and magistrate is hereby directed and required to admit to bail every such officer, and every person so employed, and every person acting in such aid and assistance as aforesaid; any law, usage, or custom to the contrary thereof in anywise notwithstanding." 7&8G.4. c.58.

§41. "Whenever any person shall be charged with violently assaulting or resisting as aforesaid any officer of excise or person so employed, or person acting in such aid and assistance as aforesaid, in the due execution of his office or duty, and such charge shall, by affidavit or by certificate of an indictment or information being filed against such person for any such offence, be made to appear to any judge of any of H.M.'s superior courts of record in which such indictment or information shall be found or filed, or into which the same shall have been removed, it shall be lawful for such judge to issue his warrant in writing under his hand and seal, and thereby to cause any person, being a defendant in such indictment or information, to be apprehended and brought before him or some other judge of such court, or before some one of H.M.'s justices of the peace, in order that such defendant may be bound to the king's majesty, with two sufficient persons as sureties, in such sum (the same not being in any case less than 100*l.*) as in the said warrant shall be expressed, with condition to appear in such court at the time mentioned in such warrant, to answer his said majesty in the said court concerning any articles on behalf of H. M., to be there objected against him for any such offence as aforesaid; and in case any such defendant shall neglect or refuse to become bound as aforesaid, it shall be lawful for such judge or justice of the peace respectively, and they are hereby respectively directed and required to commit such defendant to the common gaol of the county, shire, division, city, town, or place where the offence shall have been *committed*, or where such de- Persons against whom indictments or informations for resistance shall have been found or filed, to give security to answer it; or, in default, may be committed.

'&8G.4. c.53. fendant shall have been apprehended, until such defendant shall become bound as aforesaid, or shall be discharged by order of such court in term-time, or by one of the judges of such court in vacation; and the recognisance to be taken thereupon shall be returned and filed in such court, and shall continue in force until such defendant shall have been acquitted of such offence, or, in case of conviction, shall have received judgment for the same, unless sooner ordered by such court to be discharged."

If an offender be in prison for want of bail, a copy of the indictment or information may be delivered to the gaoler, with a notice of trial, and proceedings had thereon.

§ 42. "Where any such defendant is or shall be committed to and detained in gaol for want of bail, it shall be lawful for the prosecutor of such indictment or information to cause a copy thereof to be delivered to the gaoler, keeper, or turnkey of the gaol wherein such defendant is or shall be so detained, with a notice therein indorsed, that unless such defendant shall, within such space of time as shall be for that purpose limited and fixed by the court in which such indictment or information shall be found or filed, or into which the same shall have been removed, cause an appearance and also a plea or demurrer to be entered in the said court to such indictment or information, and appearance and the plea of not guilty will be entered thereto in the name of such defendant; and the prosecutor of such indictment or information shall also be at liberty to indorse on the copy of such indictment or information so delivered a further notice, that the issue to be joined on such indictment or information will be tried in the next term, or at the next assizes, or at the next general gaol delivery or court of justiciary to be holden in or for the county, shire, division, city, town, or place in which the offence shall be alleged to have been committed, or the venue laid in such indictment or information; and in case any defendant, so committed or detained as aforesaid, shall neglect to cause an appearance and also a plea or demurrer to be entered in such court to such indictment or information, within the space of time so to be limited and fixed by such notice as aforesaid, then, upon an



ment or information which shall be found, commenced, or prosecuted for any such violent assault or resistance as aforesaid, it is enacted, that every such offence shall and may be inquired of, examined, tried, and determined in any county in *England*, if such offence shall have been committed in *England* or in any of the islands thereof, or in any county in *Scotland*, if the same shall have been committed in *Scotland* or in any of the islands thereof, or in any county in *Ireland*, if the same shall have been committed in *Ireland* or in any of the islands thereof, in such manner and form as if the same offence had been committed in such county respectively; and that whenever any person shall be convicted of any such violent assault or resistance as aforesaid, it shall be lawful for the court before which any such offender shall be convicted, or which by law is authorised to pass sentence upon any such offender, to award and order (if such court shall think fit) sentence of imprisonment, with hard labour, for any term not exceeding the term of three years, either in addition to or in lieu of any other punishment or penalty which may by law be inflicted or imposed upon any such offender; and every such offender shall thereupon suffer such sentence in such place, and for such term as aforesaid, as such court shall think fit to direct." 7&8 G.4. c.53. assaulting officers may be tried in any county, and offenders convicted thereof sentenced to hard labour.

§ II. (f) Searches and Seizures.

By stat. 7 & 8 *G.* 4. *c.* 53. § 34. "If any officer of excise shall have cause to suspect that any goods or commodities forfeited under or by virtue of this act, or any other act or acts of parliament relating to the revenue of excise, are deposited or concealed in any place, then and in every such case, if such place shall be within the limits of the chief office of excise in *London*, upon oath being made by such officer before the commissioners of excise, or any two or more of them, or if such commissioners shall not be publicly sitting for the despatch of business, or such place or places shall be in any other part of the U. K., out of the limits of the said chief office, then upon such oath being made before one or more justice or justices of the peace for the county, shire, division, city, town, or place where such officer shall suspect such goods or commodities to be deposited or concealed, setting forth the ground of such suspicion, it shall be lawful to and for the said commissioners, or any two or more of them, or the justice or justices of the peace respectively (as the case may be), before whom such oath shall be made, if he or they shall judge it reasonable, by special warrant or warrants under his or their hands respectively, to authorise and empower such officer, by day or by night, (but if between the hours of eleven of the clock at night and five in the morning, then in the presence of a constable or other lawful officer of the peace,) to enter into every such place where any such goods or commodities shall be suspected to be deposited or concealed, and to seize and carry away the same; and it shall be lawful for any officer to whom any such warrant shall be given or granted, and he is hereby authorised, in case of resistance, to break open any door, and to force and remove any other impediment or obstruction to such entry, search, or seizure, and removal as aforesaid." Upon an officer making oath of suspicion, two commissioners or one justice may grant warrant to enter (if in the night, in the presence of a constable,) and seize forfeited goods lodged or concealed in any place.

§ 35. "All justices of the peace, mayors, bailiffs, constables, and all H.M.'s officers, ministers, and subjects, serving under Justices, constables, &c. re-

7&8G.4. c.53.

quired to assist revenue officers.

H.M., by commission, warrant, or otherwise, shall be aiding and assisting, and they are hereby respectively required to be aiding and assisting to every officer of excise in the due execution of any act or thing required and enjoined by this act, or by any other act or acts of parliament relating to the revenue of excise, to be done; and all such persons who shall be so aiding and assisting unto any such officer of excise as aforesaid, are and shall be defended and saved harmless by virtue of this act; and if any such person shall be sued or prosecuted for or on account of any act, matter, or thing by such person done in giving such aid and assistance, every such person shall and may plead the general issue, and give this act and the special matter in evidence in defence in such behalf."

Constable or other peace-officer, on notice or request, not going with the officer of excise when his presence is required by law, to forfeit 20*l*.

§ 36. "If upon notice given or request made by any officer of excise, to any constable, headborough, or other ministerial officer of the peace, to go with him as such officer of excise, and to be present at the doing or performing of any act or thing at which the presence of a constable, headborough, or officer of the peace is or shall be required by this act, or any other act or acts of parliament relating to the revenue of excise, such constable, headborough, or officer of the peace shall not go with such officer of excise, or shall not be present at the doing or performing of any such act or thing, or shall refuse or neglect so to do, or to be present as aforesaid, every such constable, headborough, or officer of the peace so offending, shall for every such offence forfeit and lose the sum of 20*l*."

Constables may continue assistance into neighbouring districts.

§ 37. "It shall be lawful for every constable, headborough, or other ministerial officer of the peace, who shall have begun to assist any officer or officers of excise in the execution of his or their duty in any place where such constable, headborough, or ministerial officer of the peace shall have jurisdiction by law, and such constable, headborough, and ministerial officer of the peace is hereby respectively authorised and required to continue

customs; any thing in this act or in any other act or acts of parliament to the contrary thereof notwithstanding." 7&8G.4. c.53.

§ 64. "All goods, commodities, and chattels whatsoever, forfeited under or by virtue of this act, or any other act or acts of parliament relating to the revenue of excise, shall and may be seized by any officer or officers of excise, or person or persons employed in the revenue of excise, or person or persons acting in the aid and assistance of any such officer or person so employed as aforesaid; and that on all trials of seizures whatsoever, in any of the courts of exchequer or elsewhere, the seizure, together with the form and manner of making the same, shall be taken to have been as set forth in the information, without any evidence thereof; and it shall be lawful for all judges and other judicial persons before whom any such seizure shall be brought to trial or hearing, and having respectively jurisdiction in that behalf, and they are hereby respectively authorised and required to proceed to trial on the merits of the cause, without inquiring into the fact, form, or manner of making the seizure."

Goods forfeited under excise laws may be seized by any officer of excise, or his assistant.

On trials of seizures, merits to be proceeded on without inquiring into fact or form of seizure.

§ 107. "All officers of the customs who shall make any seizure under or by virtue of this act, or any other act or acts of parliament relating to the revenue of excise, of any exciseable goods or commodities, shall forthwith give notice of such seizure at the next office of excise, or to the supervisor or other officer of excise of the district where such seizure shall have been made; and such supervisor or other officer of excise shall, on such notice, take a particular account of the species and quantities of all such goods and commodities so seized respectively; and the same or any part thereof shall not afterwards be removed without a permit, (where a permit is, for the removal of goods or commodities of a similar quantity, sort, or kind, required under any act or acts of parliament relating to the revenue of excise,) signed by the proper officer of excise of the place or district from whence the same shall be intended to be removed, on pain of forfeiture thereof for such removal."

Officers of customs to give notice of the seizure of exciseable goods.

Such goods, if removed without permit, shall be forfeited.

§ 108. "All goods or commodities whatsoever which are or shall be prohibited, or which are or shall be subject to any duty or duties of excise, and which shall be stopped, detained, or taken by any police-officer or peace-officer, or any other person, under or by virtue of any act or acts of parliament, or under or by virtue of any other authority whatsoever, shall be conveyed, and the same is and are hereby directed and required to be forthwith conveyed to and deposited and lodged in the chief office of excise, if the same shall have been stopped, detained, or taken within the limits of the chief office, or in the nearest office of excise if in any other part of the U. K., in order that all such goods or commodities as aforesaid, and the person or persons in whose custody or possession the same were found, may be prosecuted or proceeded against as the nature of the case shall or may require; any thing in any act or acts of parliament to the contrary thereof notwithstanding."

Seizures of exciseable commodities by police or peace officers to be lodged in the chief or other office of excise.

§ 109. "Provided always, that in case any such goods or commodities as aforesaid shall be stopped, detained, or taken by any police-officer or peace-officer, or any other person, on suspicion of the same having been feloniously stolen, or taken, or received, it shall be lawful to and for such police-officer or peace-officer, or

If stopped on suspicion of felony, to be lodged in the police-office, and notice

7&8G.4. c.53.

thereof given to the proper officer of excise, who shall be permitted to examine them.

other person so stopping, detaining, or taking the same, to convey to, deposit, and lodge forthwith all such goods and commodities as aforesaid in the office of the police-office nearest to the place where the same shall have been so stopped, detained, or taken as aforesaid, or any other convenient place directed by the justice or justices of the peace before whom the same shall be carried, there to remain in order to be produced at the trial of any person or persons who shall be charged with feloniously stealing, taking, or receiving the same; and every such police-officer or peace-officer, or other person who shall so stop, detain, or take any such goods or commodities as aforesaid, after he shall have stopped, detained, or taken the same as aforesaid, shall forthwith give notice thereof in writing at the chief office of excise, if the same shall have been stopped, detained, or taken within the limits thereof; and if the same shall have been stopped, detained, or taken in any other part of the U. K., then at the office of excise nearest to the place where the same shall have been so stopped, detained, or taken; and any officer of excise shall thereupon be permitted to examine and take account of the same."

After trial, the goods to be immediately deposited in the excise-office, to be dealt with according to law.

§ 110. "When and so soon as any person or persons charged with feloniously stealing, taking, or receiving any such goods or commodities as aforesaid shall have been tried for such offence, all such goods and commodities respectively as aforesaid shall immediately be conveyed to and deposited in the chief office of excise, or other office of excise as aforesaid, in order that prosecution or proceedings may be had for the condemnation of such goods or commodities for such cause or causes of forfeiture as the same shall be liable to, or that the same may be restored upon payment of such duty or duties as may be due in respect thereof, or upon such conditions as the commissioners of excise, or the commissioner or commissioners and assistant-commissioners of excise in *Scotland* and *Ireland* respectively, shall think fit, to such person or persons as shall be proved to be the legal proprietor or proprietors thereof respectively, or for the purpose of being otherwise dealt with

residence and the business or profession of such person or persons; and if such person or persons shall reside in *London*, *Edinburgh*, or *Dublin*, or within ten miles thereof respectively, oath shall be made by every such person before one of the barons of the said courts of exchequer respectively, that the goods, commodities, or chattels respectively so claimed was or were really and truly the *bonâ fide* property of such person or persons at the time of such seizure; but if any such person shall not reside in *London*, *Edinburgh*, *Dublin*, or within ten miles thereof respectively, then and in such case oath shall be made in like manner by such person, or by the agent or attorney or solicitor by whom such claim shall be entered, that he has full and legal authority and directions from such proprietor to enter such claim, and that to the best of his knowledge and belief such goods, commodities, or chattels respectively were at the time of the seizure thereof really and truly the *bonâ fide* property of the person or persons in whose name or names such claim is so entered, which oath shall be indorsed and certified on the back of the indenture of appraisement upon which such claim shall be entered; and on failure thereof, the goods, commodities, or chattels respectively shall be condemned, and judgment shall be entered thereon by default, in the same manner as if no claim had been entered thereto; and every person who shall be convicted of making or taking a false oath to any of the facts herein-before directed or required to be sworn, shall be deemed guilty of perjury, and shall be liable to all the pains and penalties to which persons are liable for wilful and corrupt perjury." 7&8G.4. c.53.

§ 63. "Upon the entry of any such claim to any goods, commodities, or chattels whatsoever, seized as forfeited under or by virtue of this act, or any other act or acts of parliament relating to the revenue of excise or customs, which are returned for condemnation as aforesaid, the person or persons who shall enter any claim as proprietor or proprietors thereof respectively, and who shall reside within the jurisdiction of the court in which such claim shall be entered, shall be bound, with two other sufficient persons as sureties, in the penalty of 100*l.*, to answer and pay the costs occasioned by such claim; and where any such proprietor or proprietors shall not reside within such jurisdiction, the agent, attorney, or solicitor by whose directions such claim shall be entered shall in like manner be bound, with two other sufficient persons as sureties, in the like penalty, to answer and pay the costs occasioned by such claim; and in default of giving such security within the time limited by the practice of the court in which such claim shall be entered, all such goods, commodities, or chattels respectively shall be adjudged to be forfeited, and shall be condemned as unclaimed; any law, custom, or usage to the contrary thereof in anywise notwithstanding." Claimants shall be bound with two sureties in a penalty of 100*l.* to pay costs of claim, and in default thereof the goods, &c. shall be condemned

§ II. (h) Recovery of Debts and Penalties, and Proceedings on Condemnation and Sale of Forfeited Goods.

By stat. 7 & 8 *G.* 4. *c.* 53. § 57. "All penalties imposed by this act, or any other act or acts of parliament relating to the revenue Prosecutions in the superior

7&8G.4. c.53.

courts of record to be within three years.

of excise, and incurred for or by reason of any offence or offences against this act, or the said other acts or any of them, may be sued for and recovered, and all goods, commodities, and chattels seized as forfeited under or by virtue of this act, or any other act or acts of parliament relating to the revenue of excise, may be returned for condemnation and condemned in H. M.'s courts of exchequer at *Westminster*, *Edinburgh*, or *Dublin* respectively, as the cause of such prosecution may have arisen in *England*, *Scotland*, or *Ireland*: Provided always, that the proceedings for the recovery of any such penalty or penalties, or for the condemnation of any such goods, commodities, or chattels, shall be commenced respectively within three years next after the commission of the offence or offences by which such penalty or penalties shall have been incurred, or after the seizure of such goods, commodities, or chattels shall have been made."

Courts of exchequer in Scotland and Ireland to exercise the like jurisdiction, and employ the same process for the recovery of the excise revenue as the court of exchequer in England.

§ 58. "H. M.'s courts of exchequer in *Scotland* and *Ireland* respectively, and the barons and judges of the said courts respectively, shall and they are hereby respectively empowered, authorised, and required to exercise in *Scotland* and *Ireland* respectively the like jurisdiction, and to make, issue, hold, and enforce the like rules, orders, process, and proceedings in and for the condemnation of any goods, commodities, and chattels forfeited under or by virtue of this act, or any other act or acts of parliament relating to the revenue of excise, and in and for the recovery of any debts, duties, penalties, and forfeitures due to H. M., his heirs or successors, arising from or relating to the revenue of excise, or incurred under or by virtue of this act, or the said other acts or any of them, as are directed by this act to be, or as at and immediately before the commencement of this act are, or as hereafter may be exercised, made, issued, held, or enforced for such purposes respectively in or by H. M.'s court of exchequer in *England*, and the barons and judges thereof, and according to the practice of such last-mentioned court: Provided always, that nothing herein-before contained shall repeal or be deemed or con-

Nothing herein to repeal 6 Ann.

[redacted]

mitted, under the seal of the said court, to such other of H. M.'s said courts of exchequer as shall be named or specified in such application; and such last-mentioned court shall, upon application made on behalf of H. M., his heirs or successors, cause such copy so exemplified and transmitted to be forthwith enrolled in the rolls of the said last-mentioned court; and upon the same being so enrolled, the said last-mentioned court shall cause execution or other process to issue for recovering and levying the said debt so due, according to the rules and practice of such court, in like manner in all respects as if such record had been originally entered or filed in the said last-mentioned court, or the said debt had originally accrued within the jurisdiction thereof; and the proceeds of such debt, when so recovered, shall be accounted for and paid over in the same manner as if the same had been recovered within the jurisdiction of the court in which such debt originally accrued." 7&8G.4. c.58.

Service of subpœna in any one part of the U.K. valid as to appearance in any other part.

§ 60. Reciting that "it is fit to provide for the appearance of every person to any writ or process of subpœna issued against such person out of the court of exchequer in *England*, *Scotland*, or *Ireland*, whether to answer H. M. in such court concerning any articles on behalf of H. M. to be there objected against such person, or to give evidence upon the trial of any information or issue depending in such court, or upon any inquisition to be taken upon any commission or writ of extent issued out of such court, in whatever part of the U. K. the person against or to whom such subpœna respectively may be issued shall be or reside; it is enacted, that the service of any writ of subpœna or other process issued out of any of H. M.'s courts of exchequer in *England*, *Scotland*, or *Ireland*, upon any person who shall reside or be in any part of the U. K. out of the jurisdiction of such court, requiring the appearance of such person to answer H. M. in the said court concerning any articles to be there on H. M.'s behalf objected, or to give evidence upon the trial of any information or issue depending in such court, or upon any inquisition to be taken upon any commission or writ of extent issued out of such court, shall be as good and effectual in law as if such writ or process had been served in that part of the U. K. within the jurisdiction of the court where the person so served shall be required to appear; and in case any person so served shall not appear according to the exigence of such writ or process, it shall be lawful for the court out of which the same shall have been issued, upon proof being made of the service thereof to the satisfaction of such court, to transmit a certificate of such default, under the seal of such court, to the court of exchequer in that part of the U. K. in which such writ or process shall have been served; and it shall thereupon be lawful for such last-mentioned court in all such cases, and such last-mentioned court is hereby authorised and required to proceed against and punish the person so having made default, in like manner as such last-mentioned court might lawfully have done if such person had neglected or refused to appear in obedience to a like writ of subpœna or other process issued out of such last-mentioned court: Provided always, that in cases where the subpœna or other process served shall be to give evidence, no person so having made default as aforesaid shall be proceeded against or punished by reason or on account thereof, unless it

7&8G.4. c.53.

shall be made to appear to the satisfaction of such last-mentioned court, that a reasonable and sufficient sum of money to defray the expenses of so attending to give evidence, and of returning from giving such evidence, had been tendered to such person previous to such default."

No action to be commenced, or writ of appraisement issued, unless by order of the commissioners, or in the name of the attorney-general.

§ 61. "It shall not be lawful to commence, prosecute, enter, file, or exhibit any action, bill, plaint, or information, or other legal proceeding, against any person or persons, for the recovery of any penalty or forfeiture incurred under or by virtue of this act, or any other act or acts of parliament relating to the revenue of excise or customs, or to issue or cause to be issued any writ of appraisement for the condemnation of any goods, commodities, or chattels whatsoever, seized as forfeited under or by virtue of this act, or the said other acts or any of them, except by order of the commissioners of excise or customs, or by order of the commissioner or commissioners and assistant commissioner of excise or customs in *Ireland*, and in the name and at the suit of an officer of excise or customs, or by and in the name and at the suit of H. M.'s attorney or solicitor general for *England* or *Ireland* respectively, in *England* or *Ireland* respectively, or by order of the commissioner or commissioners and assistant commissioners of excise or customs in *Scotland*, and in the name and at the suit of such officer, or by and in the name and at the suit of the lord advocate or H. M.'s solicitor-general for *Scotland* in *Scotland*; and if any such action, bill, plaint, or information, or other legal proceeding, or writ of appraisement, shall be commenced, prosecuted, entered, filed, exhibited, or issued in any other manner than as aforesaid, such action, bill, plaint, information, or other legal proceeding, or writ of appraisement, and all proceedings thereupon respectively had, shall be and are hereby declared to be null and void; any law, custom, or usage to the contrary thereof notwithstanding: Provided always, that nothing herein contained shall be deemed or construed to extend to any summary proceeding by or at the instance of any officer of excise or customs,

Not to extend to summary proceedings on

adjudged, and determined by any three or more of the commissioners of excise; and where the offence shall have been committed, or the person or persons committing the same shall be found, or where the goods, commodities, or chattels shall have been seized as aforesaid, in any part of the U. K. out of the limits of the said chief office, the information thereupon may be exhibited before any one or more of H. M.'s justices of the peace for the county, shire, division, city, town, or place wherein the offence shall have been committed, or the person or persons committing the same shall be found, or where the goods, commodities, or chattels shall have been seized as aforesaid; and such information shall and may be heard, adjudged, and determined by any two or more of H. M.'s justices of the peace for the said county, shire, division, city, town, or place; and such commissioners of excise, and any two or more of such justices of the peace respectively, shall and they are hereby respectively authorised and required, upon any such information having been so exhibited as aforesaid, and upon the appearance and pleading of the person or persons against whom such information shall have been exhibited, or who shall claim any goods, commodities, or chattels in such information alleged to have been forfeited, or in default of such appearance and pleading, upon proof of the service of such summons of such person or persons as hereinafter mentioned, to proceed to the examination of the fact or facts in such information alleged, and to give judgment, as well for any such penalty or penalties which upon the due examination of one or more credible witness or witnesses upon oath, or upon the voluntary confession of the party accused, shall be found to have been incurred, as for the condemnation of any goods, commodities, or chattels seized as aforesaid, which upon such examination or confession shall be found to be forfeited, or respectively as the case may require; and such commissioners and justices respectively shall and they are hereby authorised and required thereupon to award and grant a warrant or warrants under their hands, for the due execution of and carrying into effect, as hereinafter mentioned, such judgment: Provided always, that where any such information as aforesaid shall be exhibited before any justice or justices of any county or shire in *England*, *Scotland*, or *Ireland* respectively, in which there are several and distinct commissions of the peace, no information thereupon exhibited before any such justice or justices, nor any judgment thereupon given by such justices, nor any warrant or warrants thereupon granted for the due execution thereof, shall be subject or liable to any objection whatsoever by reason of any offence alleged in such information having been committed, or the person or persons committing the same having been found, or the

7&8 G. 4. c. 53.

No information exhibited before justices of the county shall be objectionable because there are distinct commissions of the peace within whose jurisdiction the offence was committed.

stion, leaving therein blanks for the names of the justices, and the day and month and year, and place when and where laid; and when those blanks are filled up by direction or consent of the justices, then it becomes a record made by them. The mentioning the place where the information is laid is, that it may appear that the prosecution was in the proper county; and therefore though it may happen that for laying the information, the prosecutor may be obliged to attend one justice in one town, and another justice in another town, it must not be mentioned that the information was laid at both towns, for that would be absurd; but in such cases it is usual to express that the information is laid at the town where the hearing is intended to be. 1 *Shaw.* Excise, 342, 343.

1&8G.4. c.53.

goods, commodities, or chattels having been seized as aforesaid, in any division, city, town, or place of such county or shire having local jurisdiction, whether such city, town, or place be or be not a county in or of itself; any thing in this act, or any other act or acts of parliament, to the contrary thereof in anywise notwithstanding."

Information to be laid within four months after offence committed; and notice of information to be given within a week after.

§ 66. "Every such information as aforesaid shall be exhibited before the commissioners of excise, or justice or justices of the peace respectively, within four calendar months next after the offence or offences alleged in such information shall have been committed, or the goods, commodities, or chattels therein alleged to have been forfeited shall have been seized; and a notice in writing of such information having been so exhibited shall be given to the person or persons against whom the same shall have been exhibited, for the penalty or penalties incurred for such offence or offences, or to the person or persons who shall claim the goods, commodities, or chattels in such information alleged to have been forfeited, within one week next after such information shall have been exhibited; and the commissioners of excise, or justice or justices of the peace, before whom any such information shall have been exhibited as aforesaid, are hereby respectively authorised and required to summon every person against whom any such information shall have been exhibited, or who shall claim any goods, commodities, or chattels as aforesaid, to appear and plead to and to attend the hearing of such information, at a time and place to be stated in such summons, which summons shall be served upon every such person or persons fourteen days at the least before the time appointed in such summons: Provided always, that where such information shall be exhibited as aforesaid for the recovery of double the value of any duty or duties neglected to be paid or cleared off, as by this act before directed, it shall be sufficient if such summons as aforesaid be served within twenty-four hours at the least before the time appointed in such summons: And provided also, that in all such cases it shall be deemed and

Summons to parties to appear and plead to the information.

[redacted]

justices of the peace before whom any such information shall have been exhibited as aforesaid, or before whom any proceedings shall have been had upon any such information, shall die or be absent at any time after such information shall have been so exhibited, and before the person or persons against whom such information shall have been exhibited shall appear or plead to such information, or before any judgment shall be thereupon given, or before any judgment thereupon given shall be duly executed, so that the further attendance of any such justice or justices thereupon cannot be procured, it shall be lawful for any other justice or justices of the peace within the same jurisdiction to act therein for and in lieu of the justice or justices of the peace so dying or absent, in all respects relating to such information, and the due completion of the proceedings thereupon, in the same manner as if such information had been at first exhibited before such other justice or justices respectively; and that all powers and authorities, rules and regulations, given and granted by any act or acts of parliament relating to justices of the peace, or to constables or other officers acting under their authority, respecting summary proceedings, shall be enforced, and shall be applied to and executed, (excepting wherein altered or otherwise specially provided for by, or which shall be repugnant to or inconsistent with this act,) for the conviction of any person or persons prosecuted by order of the commissioners of excise, or the commissioner or commissioners and assistant commissioners of excise in *Scotland* and *Ireland* respectively, for any penalty incurred by such person or persons under or by virtue of this act, or any other act or acts of parliament relating to the revenue of excise, and for the levy of any such penalty, or for the imprisonment of any such offender or offenders, in the same manner as if such powers and authorities, rules and regulations, had been and were repeated and contained in the body of this act."

7&8 G. 4. c. 53.

Regulations in case of the death or absence of any justice during proceedings.

Reference to former general powers of justices.

§ 68. "It shall not be lawful for any assistant commissioner of excise, or for any officer of excise or person employed in the collection or management of the revenue of excise, to act as a justice of the peace in any part of the U. K., in the execution of any of the powers, authorities, clauses, matters or things contained in this act, or in any other act or acts of parliament relating to the revenue of excise; and that it shall not be lawful for any trader subject to the excise laws to act as a justice of the peace as aforesaid in any case which relates to the particular trade or business of such trader, or in any case in which he shall be in anywise, as such trader, concerned or interested; and if any such assistant commissioner, or any such officer or person employed as aforesaid, or any such trader as aforesaid, shall presume to act as a justice of the peace, contrary to the true intent and meaning of this act, all proceedings in that behalf shall be and the same are hereby declared to be utterly null and void to all intents and purposes."

No officer of excise to act as a justice in excise cases, nor any excise trader in any case relating to his trade.

§ 69. "Where by any act or acts of parliament relating to the revenue of excise or customs, a penalty of treble the value of goods or commodities is imposed for or in respect of any offence committed by any person or persons against such acts, or any of them, every person so offending shall thereupon severally forfeit and lose for every such offence, either treble the value of the goods or commodities, to be estimated and taken according to and

Penalties of treble value to be either treble the value of the best goods of the like kind, or 100*l.*, at the election of the

7&8 G. 4. c. 58.

commissioners of excise or prosecutor.

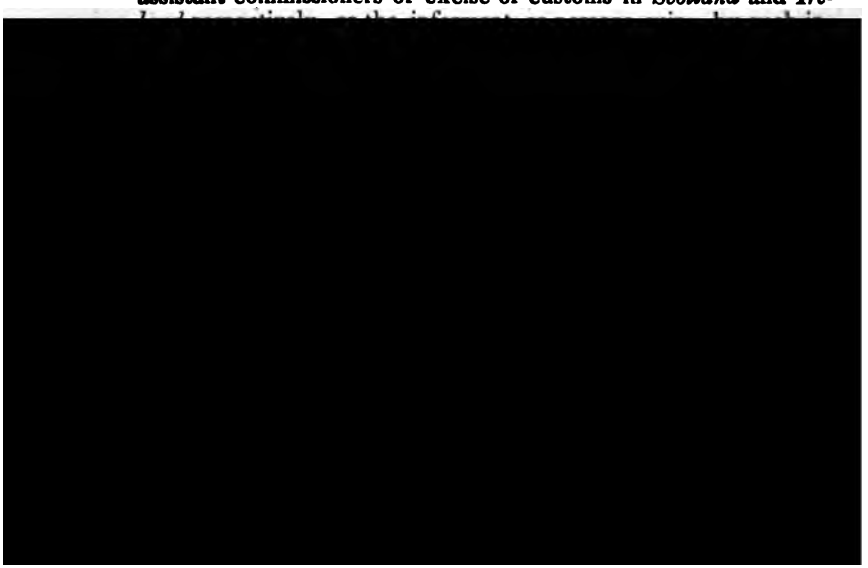
at the rate and price for which the best goods or commodities of the like sort or kind and denomination for which the duty or duties thereon have been paid were sold for in *London*, *Edinburgh*, or *Dublin* respectively, (as the penalty may have been incurred in *England*, *Scotland*, or *Ireland* respectively,) at the time of the commission of such offence, or the sum of 100*l.* in lieu and instead of such treble value, at the election of the commissioners of excise or customs, or the commissioner or commissioners and assistant commissioners of excise or customs in *Scotland* and *Ireland* respectively, or the person who shall inform or sue for the same."

Persons incurring excise penalties may be prosecuted jointly or severally.

§ 70. "Where by this act, or any other act or acts of parliament relating to the revenue of excise, a penalty is imposed upon every person committing the offence by which such penalty is incurred, and such offence shall have been or shall be committed by several persons jointly, such several persons shall jointly and severally incur every such penalty, and it shall be lawful to proceed against such persons jointly or severally for the recovery thereof, as the commissioners of excise, or the commissioner or commissioners and assistant commissioners of excise in *Scotland* and *Ireland* respectively, may deem expedient; any thing in this act, or in any other act or acts of parliament to the contrary thereof notwithstanding."

Averment in information that the commissioners had ordered prosecution, &c. shall be deemed sufficient proof of such order, &c.

§ 71. "Where, in any information for the recovery of any penalty, or for the condemnation of any goods, commodities, or chattels seized as forfeited under this act, or any other act or acts of parliament relating to the revenue of excise or customs, any allegation or averment shall be made that such information was exhibited, or that the commissioners of excise or customs, or the commissioner or commissioners and assistant commissioners of excise or customs in *Scotland* and *Ireland* respectively, had ordered such information to be exhibited, or that the commissioners of excise or customs, or the commissioner or commissioners and assistant commissioners of excise or customs in *Scotland* and *Ire-*



7&8G.4. c.53.

Commissioners and justices to proceed to hearing and judgment on the merits without regard to defects in form.

§ 73. "It shall be lawful for the commissioners of excise and the justices of the peace respectively, and they are hereby respectively authorised and required, upon the appearance of any person or persons summoned upon any information, or in default of the appearance of such person or persons, and upon proof of the service as before mentioned of such summons as aforesaid, to proceed to the examination of the fact or facts alleged in such information, and of the witness or witnesses on either side, upon oath, touching the penalty or penalties alleged in such information to have been incurred, or the forfeiture of any goods, commodities, or chattels therein alleged to have been seized as forfeited, and thereupon to give judgment accordingly, notwithstanding any defect or defects of form which may appear in such information, or in any proceedings thereupon or relating thereto."

Witnesses summoned and not appearing, or refusing to give evidence, to forfeit 50*l.*

§ 74. "It shall be lawful for the commissioners of excise and justice or justices of the peace, and commissioners of appeal under this act respectively, before whom any such information as aforesaid, or any matter or thing under this act, or any other act or acts of parliament relating to the revenue of excise, shall be judicially brought, and they are hereby respectively authorised and required to summon any and every person (other than the person or persons against whom such information is exhibited), in whatever part of the U. K. any such person so summoned shall then reside or be, to appear before the said commissioners or the justices, or the said commissioners of appeal, who are to hear, adjudge, and determine such information, matter, or thing, at a certain time and place to be specified and set forth in such summons, to give evidence upon oath of the truth of any facts alleged in such information, or touching or relating thereto, or to such matter or thing as aforesaid; and every person, other than as aforesaid, being so summoned, and having the reasonable expenses for such attendance tendered, who shall neglect or refuse to appear according to the exigency of such summons, or who, having so appeared, shall refuse to take oath, or, if a quaker, to affirm, or shall refuse to give evidence, or to answer, according to the best of his or her knowledge and belief, any legal question, when thereunto required, shall for every such default or offence forfeit and lose the sum of 50*l.*"

Officers of excise and informers to be deemed competent witnesses, notwithstanding any interest in the penalty or forfeiture under prosecution.

§ 75. "And whereas, for better securing H. M.'s revenue of excise, and the encouragement of the officers and others who shall detect or give information of any offence committed against the several acts of parliament relating thereto, the penalties and forfeitures by such acts imposed are directed, where such penalties are recovered, or the goods, commodities, or chattels seized as forfeited are condemned, to be divided between H. M. and the person or persons who shall have detected or given information of the offences: And whereas, from the secret manner in which such offences are committed, it frequently happens that the officer of excise, or other person detecting or informing of the offence, is the only or a principal witness to prove the same, but the offenders escape conviction by reason of objection being made and allowed to the competency of such witness on the trial or hearing for the recovery of such penalty, or the condemnation of such goods, commodities, or chattels, on account of his interest as a person entitled to a share of such penalty or seizure; and it is therefore

7&8G.4. c.53. expedient to remove all such objections: Be it therefore enacted, that upon the trial or hearing of any information or other legal proceeding for the recovery of any penalty incurred, or for the condemnation of any goods, commodities, or chattels seized as forfeited under or by virtue of this act, or any other act or acts of parliament relating to the revenue of excise, any officer of excise, or any other person who shall or may be entitled to the whole or any share of such penalty or of such seizure, shall be admitted by the court in which, or the commissioners or the justices before whom such information shall be tried or heard, to give evidence upon such information, and shall be deemed and taken to be a competent witness upon such trial or hearing, notwithstanding any such interest as aforesaid."

Proof of payment of duties, or that goods seized are not of the sort or kind alleged, shall lie upon the proprietor or person claiming.

§ 76. "If upon any information, for the recovery of any penalty or penalties incurred, or for the condemnation of any goods, commodities, or chattels seized as forfeited under or by virtue of this act, or any other act or acts of parliament relating to the revenue of excise or customs, or in any action brought by the proprietor or claimer of such goods, commodities, or chattels, against any officer of excise, or any person employed in the revenue of excise, or any person acting in the aid and assistance of any such officer or person so employed as aforesaid, for any act, matter, or thing done in pursuance of any such act or acts of parliament, any question shall be made or shall arise whether any duty of excise or customs has been paid upon or in respect of the goods or commodities in such information mentioned, or whether such goods, commodities, or chattels are respectively of such sort or kind as in such information is in that behalf alleged, the proof of the payment of such duty, or that the said goods, commodities, and chattels respectively are not of such a sort or kind as aforesaid, shall lie upon the proprietor or claimer thereof."

Judgment to be entered by default against a

§ 77. "Where any person or persons shall be in prison on any account whatsoever, and any information shall be exhibited before the commissioners of excise, or any justice or justices of the peace

any penalty incurred for any offence committed against this act, or any other act or acts of parliament relating to the revenue of excise, for which any information shall have been exhibited before such commissioners or justice or justices respectively, as they the said commissioners and justices respectively in their discretion shall think fit, so as such mitigation shall not reduce such penalty to less than one-fourth part thereof; and every such mitigation, and payment thereupon accordingly made, shall be a sufficient discharge of every such penalty to the person or persons convicted of such offence: Provided always, that it shall be lawful for the commissioners of excise, and the commissioner or commissioners and assistant commissioners of excise in *Scotland* and *Ireland* respectively, when they shall see cause, and they are hereby authorised and empowered to further mitigate or entirely remit any such penalty; any thing herein-before contained to the contrary thereof in anywise notwithstanding." 7&8G.4. c.53.

Commissioners may further mitigate or entirely remit penalty.

§ 79. "No writ of *certiorari* or other writ or process shall be issued at the suit of any defendant, out of any of H. M.'s courts of record in *England*, *Scotland*, or *Ireland*, nor shall any bill of suspension, advocation, or reduction be passed, nor shall any letter or letters of suspension, advocation, or reduction, or any other proceeding, be issued out of the court of session or court of justiciary in *Scotland*, to supersede, sist, stay, remove, or in anywise affect any information or judicial proceeding before the commissioners of excise or commissioners of appeal in this act after mentioned, or before any justice or justices of the peace in the U.K., in pursuance of this act, or any other act or acts of parliament relating to the revenue of excise, or any judgment thereupon; and every such information shall be tried and determined, and every such judicial proceeding shall be had and completed, and every such judgment executed, any such writ of *certiorari* or other writ or process, or bill or letter or letters of suspension, advocation, or reduction, or other proceeding notwithstanding: Provided always, that nothing herein contained shall extend, or be deemed or construed to extend, to any writ of *certiorari* sued or issued in such cases in behalf of H. M., out of H. M.'s courts of exchequer in *England*, *Scotland*, or *Ireland* respectively."

No certiorari at the suit of a defendant to supersede or affect any proceedings by commissioners of excise or justices of the peace.

Proviso as to certiorari at the suit of the crown out of the exchequer.

§ 80. "It shall be sufficient, in the record or written account of any proceedings before the commissioners of excise, to state that the information was exhibited to and before the commissioners of excise, without stating their names; and every adjudication and determination upon any such information, by any three or more of such commissioners, shall and the same is hereby declared to be good and valid in law, and may be executed and put in force by virtue of a warrant or warrants under the hands of any three commissioners of excise, whether the commissioners setting their hands to such warrant or warrants shall or shall not happen to be the particular commissioners by whom such adjudication or determination was made, or whether such three commissioners so setting their hands to such warrant or warrants were commissioners at the particular time or times when such adjudication or determination as aforesaid was made; provided that the persons so setting their hands to such warrant or warrants shall, at the time and times of such their setting *their hands thereto*, actually be such

In proceedings before commissioners of excise, it shall be sufficient to mention that the information was exhibited before the commissioners of excise, without specifying their names; and any three commissioners of excise may sign warrants.

7&8G.4. c.53. commissioners; any law, custom, or usage to the contrary in any wise notwithstanding."

Commissioners of excise and justices shall grant warrants for the sale of goods, or levying of penalties, on judgments to be enforced by them.

§ 86. "Where any judgment by this act required to be en forced and executed by the commissioners of excise or justices o the peace (the same not having been appealed against, or, if ap pealed against, having been affirmed by the court of appeal,) shal be for the condemnation of any goods, commodities, or chattel seized as forfeited, it shall be lawful for such commissioners of ex cise and justices of the peace respectively, and they are hereby re spectively authorised and required to apply the money which shal have been so deposited as aforesaid in satisfaction of such judgment and if the same shall not be sufficient to satisfy such judgment, t award and grant a warrant or warrants under their hands to an officer or officers of excise, for the sale of such goods, commodi ties, or chattels which they respectively shall have condemned and where the judgment to be so enforced and executed shall b for any penalty or penalties, or for any sum or sums of money t which such penalty or penalties shall have been mitigated, it shall b lawful for such commissioners of excise or justices of the peace re spectively, and they are hereby respectively authorised and re quired to award and grant a warrant or warrants under their hand to any officer or officers of excise, authorising such officer o officers to levy the penalty or penalties, or sum or sums of money so adjudged, or so much thereof as shall not have been so satisfied as aforesaid, upon the goods and chattels of such person or per sons so convicted, and either to detain and keep such goods and chattels in the house or place where the same shall have been found, or to remove the same to the next office of excise."

Commissioners of appeal and quarter sessions shall grant warrants for the sale of goods or

§ 87. "Where any judgment is by this act required to be enforced and executed by the commissioners of appeal, or by the justices of the peace at the general quarter sessions, on appeal, shall be for the condemnation of any goods, commodities, or chattels seized as forfeited, it shall be lawful for such commissioners of appeal o

7&8G.4. c.53.

§ 88. "It shall be lawful in any such levy-warrant to order and direct therein that the goods and chattels upon which such levy shall be made shall be sold and disposed of so soon as conveniently may be after a certain time to be limited in such warrant for the sale thereof (so as such time be not less than four days nor more than eight days), unless the penalty and penalties, or sum and sums of money for which such levy shall be made, shall, within the time limited for payment thereof as aforesaid, be paid and satisfied."

In levy-warrants any time not less than four, nor exceeding eight days may be appointed for the sale of distress.

§ 89. "It shall be lawful for the officer of excise making such levy, and he is hereby empowered and required to deduct the penalty and penalties, or sum and sums of money for which such levy shall be made, and all reasonable charges and expenses attending such levy, out of the money arising by such sale as aforesaid, and to return the overplus (if any) to the proprietor or proprietors of the goods and chattels upon which such levy shall have been made, or to the person or persons legally entitled thereto; and such officer shall, if required, show such warrant to the person or persons upon whose goods and chattels such levy shall be made, and shall suffer such person or persons to take a copy thereof; and every such warrant shall be of the same force and effect in all respects as a writ of *fieri facias* issued out of H. M.'s court of exchequer in *England* for the recovery of any debt due to H. M."

Penalty and expenses to be deducted from the sale, and the overplus returned.

A copy of the warrant may be taken.

Force of the warrant.

§ 90. "For want of sufficient goods and chattels whereon such penalty and penalties, or sum and sums of money, with the charges and expenses as aforesaid, may be levied, and on a return in writing made upon any levy-warrant by any officer to whom such warrant may have been directed, to the persons by whom such warrant shall have been granted, or to the commissioners of excise, or any one or more of the justices of the peace within whose jurisdiction respectively any such warrant shall have been issued, that such officer cannot find, within the jurisdiction in which such warrant shall have been issued, any goods and chattels of the person or persons against whom such warrants shall have been granted, whereon the same can be levied, or on a return as aforesaid, that part of such penalty and penalties, or sum and sums of money, charges, and expenses, has been levied or paid, and that such officer cannot find any further goods and chattels of the person or persons against whom such warrant shall have been granted (beyond the goods and chattels already seized and sold as aforesaid), within such jurisdiction as aforesaid, whereon the residue of such penalty and penalties, or sum and sums of money, charges, and expenses, can be levied, it shall be lawful for the persons by whom such warrant shall have been granted, or for any two or more of the commissioners of excise, or any one or more of the justices of the peace to whom respectively such return shall have been made as aforesaid, and they are hereby respectively authorised and required thereupon to grant a warrant or warrants in manner aforesaid, to any officer or officers of excise, to arrest and convey such person or persons to the common gaol or house of correction within his or their jurisdiction respectively, and there to deliver the person or persons so arrested, with a duplicate of such warrant or warrants, to the gaoler or keeper of such gaol or house of correction, there to remain and

Where sufficient distress cannot be found, a warrant may issue for the arrest of the person.

& 8 G. 4. c. 53. be kept by such gaoler or keeper until satisfaction be made of such judgment as aforesaid, or until such person or persons shall be ordered by the commissioners of excise, or the commissioner or commissioners and assistant commissioners of excise in *Scotland* and *Ireland* respectively, to be liberated or discharged; any law, bill of health, custom, or usage in *England*, *Scotland*, or *Ireland*, to the contrary thereof in anywise notwithstanding."

A fresh levy-warrant may be issued when goods are found after the issue or execution of arrest-warrant.

§ 91. "Provided always, that where any goods or chattels of and belonging to any person or persons against whom any such warrant for arrest shall have been granted shall be found at any time or times after the granting or execution of such warrant, it shall be lawful for the person or persons by whom such warrant shall have been granted, or for any two or more of the commissioners of excise, or for any one or more of the justices of the peace in whose jurisdiction respectively any such goods or chattels shall be found, and he and they is and are hereby respectively authorised and required, notwithstanding the granting of such warrant of arrest, to award and grant a fresh warrant or warrants, under his or their hand or hands, to any officer or officers of excise, to levy upon the goods and chattels so found any penalty or penalties, or any sum or sums of money, charges, and expenses, for which the former levy-warrant may have been granted, or to levy so much thereof as may not have been before paid; and upon payment and satisfaction thereof, the warrant for arrest shall be discharged, and the person or persons arrested shall be forthwith liberated out of custody."

Warrants to be executed in any part of the U. K. upon indorsement by justice of the peace for the place in which the same shall

§ 92. "Where any such warrant as aforesaid shall be granted, and cannot be executed by reason that sufficient distress, or that the person or persons against whom the same shall have been granted cannot be found within the limits of the jurisdiction of the commissioners or justices in which such warrant shall have been issued, it shall be lawful for any one or more of the justices of the peace for any other county, shire, division, city,

and under the directions of this act, in execution of any judgment, but it shall be lawful for any person or persons to bring or prosecute his, her, or their action or suit against the commissioners or justices respectively by whom the original warrant in execution of such judgment shall have been granted, in the same manner as such person or persons might have done if this act had not been made." 7 & 8 G. 4. c. 53.

§ 93. "In all cases where any seizure shall be made of any goods, commodities, or chattels, under or by virtue of this act, or any other act or acts of parliament relating to the revenue of excise, and no person shall appear to claim the goods, commodities, or chattels so seized, then and in every such case, if such seizure shall have been made within the limits of the chief office of excise, it shall be lawful for any officer of excise who shall have made such seizure, after the expiration of fourteen days next after the day on which such seizure shall have been made, to cause notice in writing, signed by the solicitor of excise for the summary jurisdiction, to be affixed on some conspicuous part of the outside of the chief office of excise, signifying the day when the commissioners of excise, or any three or more of them, will proceed to hear and adjudge the matter of such seizure; and if any such seizure shall have been made as aforesaid in any part of the U. K. out of the limits of the chief office of excise, it shall be lawful for any officer of excise who shall have made such seizure to cause a notice, issued by any justice or justices of the peace within whose jurisdiction any such seizure shall have been made, and before whom any information shall have been exhibited for the condemnation thereof, to be affixed on some conspicuous part of the outside of the office of excise next to the place where such seizure shall have been made, during the market-day next after the expiration of six days from the day on which such seizure was made, or during any other subsequent market-day, in which notice there shall be specified the day (the same being any day after the termination of eight days from the date of such notice) and the place when and where the justices of the peace will proceed to the hearing and adjudging of the matter of any such seizure; and it shall be lawful for the said commissioners of excise and justices of the peace respectively, within their respective jurisdictions, and they are hereby respectively authorised and required to proceed, on the day and at the place mentioned in such notice, to examine into the cause of any such seizure, and to give judgment accordingly; and such judgment shall be as good, valid, and effectual in law as if the respective proprietor or proprietors of the goods, commodities, or chattels seized respectively, had been respectively summoned in manner herein-before in this act directed." Proceedings necessary for the condemnation of seizures, where the owners of the goods do not appear to claim.

§ 94. "Where any horses or other cattle, or any goods of a perishable nature, shall be seized by any officer or officers of excise as forfeited under or by virtue of this act, or any other act or acts of parliament relating to the revenue of excise or customs, it shall be lawful for the commissioners of excise, or the commissioner or commissioners and assistant commissioners of excise in *Scotland* and *Ireland* respectively, and they are hereby respectively authorised to order any such seizure as aforesaid to be liberated and delivered up to the claimant or claimants thereof, upon such claimant or claimants entering into a bond to H. M., in the penalty of double the *value of the horses* or other cattle Proceedings upon the seizure of horses or cattle, or goods of a perishable nature.

7&8G.4.c.53. or goods respectively so liberated and delivered up as aforesaid, with a condition thereunder written, that such bond shall be void upon payment of the appraised value of such horses or other cattle, or of such goods respectively, as aforesaid, on the condemnation thereof as forfeited; and if no claimant of any such horses or other cattle, or of such goods respectively, shall appear, or, if appearing, such claimant shall refuse or neglect to enter into such bond as aforesaid, it shall be lawful for the commissioners of excise, and commissioner or commissioners and assistant commissioners of excise in *Scotland* and *Ireland* respectively, and they are hereby respectively authorised, at any time after the expiration of fourteen days from the making of any such seizure, to order and direct that all such horses or other cattle, or all such goods respectively, as aforesaid, shall be sold at public auction, notwithstanding the condemnation thereof shall not at that time have taken place: Provided always, that if any such horses or other cattle, or if any such goods as aforesaid, shall be afterwards ordered to be restored without any proceeding being instituted for the condemnation thereof, or if instituted before the same shall have been condemned, or if upon the hearing or trial for the condemnation of such horses or other cattle, or of such goods as aforesaid, the decision or verdict thereupon shall be in favour of the claimant or claimants thereof, the appraised value of such horses or other cattle, or of such goods as aforesaid, or the proceeds of the sale thereof respectively, at the election of such claimant or claimants, shall on demand thereof be paid to such claimant or claimants, by the commissioners of excise, or the commissioner or commissioners and assistant commissioners of excise in *Scotland* and *Ireland* respectively, together with such further reasonable sum, by way of compensation for the loss sustained by reason of the seizure, detention, and sale of such horses or other cattle, or of such goods as aforesaid, as the commissioners of excise, or commissioner or commissioners and assist-



U. K., every such sheriff, sheriff-depute, mayor, bailiff, and other person, and their and every of their under-sheriffs, deputies, and other persons acting for them in any of the said offices respectively, shall and they are hereby respectively enjoined and required, upon the request or application of any of the solicitors of excise in *England*, *Scotland*, or *Ireland*, (such request to be in writing, and indorsed upon the back of such writ of *capias* or other writ or process as aforesaid, and signed by such solicitor with his name, and addition of solicitor of excise,) to grant a special warrant or warrants to such person or persons as shall be specified in such indorsement by such solicitor, for the apprehension of the person or persons named in such writ of *capias*, or other writ or process as aforesaid; and in default thereof every such sheriff, sheriff-depute, mayor, bailiff, or other person, having execution in any such writ of *capias*, or other writ or process as aforesaid, and every under-sheriff, deputy, or other person acting for them in the said offices respectively, by or through whom the said default shall have been made, shall be subject and liable to such process of contempt, fine, amerciament, penalty, and forfeiture, as they or any of them are now by any law, custom, or usage liable to in case of refusing or neglecting to execute the like writ of *capias*, or other writ or process, in the common and usual method of proceeding thereon." 7&8G.4. c.53.

§ 96. "All and every such sheriff, sheriff-depute, mayor, bailiff, under-sheriff, deputy, and other person so granting such special warrant as aforesaid, shall be and they are hereby respectively saved harmless and indemnified against H. M., his heirs and successors, and against all and every other person or persons whomsoever, for or on account of any escape of any person or persons who shall or may be taken by virtue of any such warrant as aforesaid, which shall happen between the time of taking such person or persons, and the time of such person or persons being committed to proper gaol or prison, or offered and tendered to the gaol keeper or other person having charge of such gaol or prison, (who is hereby enjoined and required to receive every such person or persons so apprehended as aforesaid, and to give a receipt for the body or bodies of such person or persons,) and of and from all actions, prosecutions, processes of contempt, and other proceedings for or on account of any such escape; any law, custom, or usage to the contrary thereof in anywise notwithstanding." Sheriffs indemnified from escapes in cases where the warrant is granted at request of the solicitor of excise.

§ 97. "Whenever any prosecution shall be commenced or depending for the recovery of any penalty incurred, or for the condemnation of any seizure made under or by virtue of this act, or any other act or acts of parliament relating to the revenue of excise, it shall be lawful for H. M.'s attorney-general, or if there be no attorney-general, for H. M.'s solicitor-general in *England* and *Ireland* respectively, or for the lord advocate, or if no lord advocate, for the solicitor-general in *Scotland*, if it shall appear to his satisfaction that such penalty or forfeiture was incurred without any intention of fraud, or of offending against any law of excise, to stop all further proceedings by entering a *noli prosequi*, or otherwise, to or on such prosecution, as well with respect to the share of such penalty or forfeiture to which any officer or other person shall or may claim to be entitled, as to the share thereof The attorney-general may enter a noli prosequi in any prosecution under the excise laws.

7 & 8 G. 4. c. 53. belonging to H. M.; any act or acts of parliament to the contrary thereof in anywise notwithstanding."

Commissioners may forbear to prosecute for penalties, or order seizures to be restored, or compound prosecutions, at any time before judgment.

§ 98. "In all cases where any penalty or forfeiture shall be incurred under or by virtue of this act, or any other act or acts of parliament relating to the revenue of excise, and it shall appear to the satisfaction of the commissioners of excise, or the commissioner or commissioners and assistant commissioners of excise in *Scotland* and *Ireland* respectively, that the same was incurred without any intention of fraud, or of offending against this act, or any other act or acts of parliament relating to the revenue of excise, it shall be lawful for such commissioners of excise, or commissioner or commissioners and assistant commissioners of excise in *Scotland* and *Ireland* respectively, to forbear to order any prosecution for the recovery of such penalty, or, upon such terms and conditions as they respectively shall order in that behalf, to forbear to order any prosecution for the condemnation of such seizure, and to restore such seizure to the proprietor or proprietors or claimant or claimants thereof; and in all cases where any prosecution shall have been commenced, or shall be depending, for the recovery of any duty or any penalty incurred, or for the condemnation of any seizure made under or by virtue of this act, or any other act or acts of parliament relating to the revenue of excise, it shall be lawful for the commissioners of excise, or the commissioner or commissioners and assistant commissioners of excise in *Scotland* and *Ireland* respectively, at any time before judgment shall be thereupon respectively entered up or given, to compound any such prosecution respectively, by the acceptance of such sum of money as they respectively shall deem fit and reasonable in that behalf, for any such duty, or in mitigation of any such penalty, or for and in lieu of the value of any such seizure, in or by way of compromise of such prosecution; and upon payment and satisfaction thereof to stay all further proceedings, and to restore the seizure to the proprietor or proprietors, or claimant or claimants thereof, making or entering into such

If terms ac- compromise: Provided always, that if any such proprietor or

they shall think fit to direct by such order as aforesaid; and no person shall be entitled to the benefit of any such order, unless the terms and conditions therein contained shall be complied with; nor shall any person accepting such terms and conditions be entitled to maintain any action or suit for any recompence or damages on account of any such seizure, or the detention thereof." 7&8G.4. c.53.

Forfeitures, after condemnation (where no special directions are given) shall be sold publicly to the best bidder.

§ 100. "All goods, commodities, and chattels whatsoever, seized as forfeited under or by virtue of this act, or any other act or acts of parliament relating to the revenue of excise, shall after the same shall have been condemned (such cases only excepted for which other directions shall in any act or acts of parliament relating to the revenue of excise be specially given) be publicly sold to the best bidder, at such time and place, and in such manner, as the commissioners of excise, or the commissioner or commissioners and assistant commissioners of excise in *Scotland* and *Ireland* respectively, shall order and direct, under and subject to all such rules, regulations, and provisions as by this act, or any other act or acts of parliament, are in that behalf made and directed."

No goods to be sold for home consumption at less price than the amount of the duties.

§ 101. "No goods or commodities, of a sort or kind subject to any duty of excise or customs, and for or in respect of which every such duty shall not have been paid, which shall be ordered or directed to be sold by the commissioners of excise, or by the commissioner or commissioners and assistant commissioners of excise in *Scotland* and *Ireland* respectively, under this act, or any other act or acts of parliament relating to the revenue of excise, or the sale of which shall be directed under any other act or acts of parliament, shall be sold for home consumption at a less price than shall be equal to the amount of the duty and duties aforesaid which shall not have been paid; and all such goods and commodities for which, on any sale so ordered or directed, a price shall not be offered equal at the least to the amount of such duty and duties, and all condemned goods and commodities, the importation whereof is or shall be wholly prohibited, shall be forthwith destroyed, or shall be sold for exportation, or applied and disposed of to such public use as shall be ordered by the lord high treasurer, or any three or more of the commissioners of the treasury."

If such price not offered, goods to be destroyed, or sold for exportation, or otherwise disposed of.

Expenses attending forfeitures to be paid out of the gross proceeds of the sale thereof; or, if not sold, out of the revenue.

§ 102. "All costs and expenses attending the seizure, detention, custody, removal, prosecution, condemnation, and sale of any goods, commodities, or chattels whatsoever, forfeited under or by virtue of this act, or any other act or acts of parliament relating to the revenue of excise, shall (such cases only excepted for which other directions shall in any act or acts of parliament relating to the revenue of excise be specially given) be paid out of the gross proceeds arising from the sale thereof respectively, whenever the same shall be sold; and in case the same shall not be sold, but shall be destroyed or otherwise disposed of, all such costs and expenses shall be paid out of the revenue of excise."

Penalties and forfeitures to be distributed equally between H. M. and the informer.

§ 103. "All penalties and forfeitures incurred and recovered under or by virtue of this act, or any other act or acts of parliament relating to the revenue of excise (such cases only excepted for which other directions shall in any act or acts of parliament relating to the revenue of excise be specially given), shall, after deduction therefrom of all costs and expenses relating thereto incurred, be distributed, one moiety thereof to the use of H. M., his heirs and successors, and the other moiety to the officer or officers of excise,

7&8G.4. c.53. or the person or persons who shall discover, inform, or sue for the same."

On proof being made of the officer acting collusively in making seizures, the commissioners of excise may direct his share to be forfeited.

§ 104. "Provided always, that upon proof being made to the satisfaction of the commissioners of excise, or of the commissioner or commissioners and assistant commissioners of excise in *Scotland* and *Ireland* respectively, that any officer or other person to whom any part or share of any penalty or forfeiture, or any reward, shall be given or payable by any act or acts of parliament relating to the revenue of excise or customs, has acted collusively or negligently, either in making any seizure, or in the wilful omission or failure to make any seizure, or to discover any fraud, or to arrest or make known any offender against any act or acts of parliament relating to the revenue of excise or customs, in the particular case in or for which such part or share of any penalty or forfeiture, or such reward, is given or payable; it shall be lawful for the said commissioners of excise, or commissioner or commissioners and assistant commissioners of excise in *Scotland* and *Ireland* respectively, in such case to direct that the whole or any part of such part or share of any penalty or forfeiture, or of such reward, which might and otherwise would have been given or payable to such officer or other person, shall be forfeited, and shall go and be applied in such manner as H. M.'s share of such penalty or forfeiture is by law at such time directed to be applied."

In exchequer prosecutions expenses may be paid, by direction of the treasury, out of the revenue of excise, and officers allowed their moiety.

§ 105. "In any prosecution for any penalty incurred under or by virtue of this act, or any other act or acts of parliament relating to the revenue of excise, and carried on in H. M.'s court of exchequer in *England*, *Scotland*, or *Ireland*, it shall be lawful for the commissioners of excise, or the commissioner or commissioners and assistant commissioners of excise in *Scotland* and *Ireland* respectively, under the direction of the lord high treasurer, or any three or more of the commissioners of the treasury, to order the whole or any part of the costs and expenses of such prosecution, whether the money which shall be recovered or received from the defendant or defendants either by way of



expenses attending the condemnation thereof, if the same be condemned, and of the sale thereof if sold, whether they produce arising from the sale thereof shall be sufficient to answer the said costs and expenses or not, to be paid out of the revenue of excise; and to distribute to and amongst the officers and persons who shall have made any such seizure, or by whose information or through whose means or assistance such seizure shall have been made, a sum or sums of money not exceeding the part, share, or proportion of such seizure, or the value thereof, in case the same shall have been sold, or if not sold, but destroyed, or otherwise applied or disposed of as aforesaid, such sum of money or reward for making such seizure as shall be by law directed to be paid in such behalf respectively as aforesaid, in full, without deducting therefrom the said costs and expenses, or any part thereof." 7&8 G. 4. c. 53. Officer's or informer's share of proceeds of sale, &c. to be paid, without deducting expenses.

§ 112. "The commissioners of excise, and the commissioner or commissioners and assistant commissioners of excise in *Scotland* and *Ireland* respectively, shall, and they are hereby respectively authorised and required to keep a separate and distinct account of the surplus (after deduction of all costs and expenses) of the money received on behalf of H. M. from any penalties and forfeitures incurred under or by virtue of this act, or any other act or acts of parliament relating to the revenue of excise, and to account for the same in such manner as the lord high treasurer, or any three or more of the commissioners of the treasury, shall direct: Provided always, that nothing in this act contained shall be deemed or construed to extend to affect or alter the hereditary revenue of H. M., his heirs and successors, in *Scotland*, or other revenues there granted to his late majesty King *George* the Second during his life, and reserved to his present majesty during his life by an act made in the first year of his present majesty's reign, but the same shall continue to be paid over in like manner as heretofore; any thing in this act contained to the contrary notwithstanding." H. M.'s share of penalties to be accounted for as directed by the treasury. Nothing herein to affect the hereditary revenue in Scotland.

§ 113. "For the necessary subsistence of any poor person who shall be confined under or by virtue of any exchequer process for the recovery of any duties or penalties under or by virtue of this act, or any other act or acts of parliament relating to the revenue of excise, or who shall be confined under or by virtue of any warrant granted by the commissioners of excise, or any justices of the peace within the U. K. under or by virtue of this act, or the said other acts, or any of them, or who shall be confined under or by virtue of any writ of extent for the recovery of any debt due to H. M., prosecuted under or by virtue of any order of the commissioners of excise, or the commissioner or commissioners and assistant commissioners of excise in *Scotland* and *Ireland* respectively, it shall be lawful for the commissioners of excise, or the commissioner or commissioners and assistant commissioners of excise in *Scotland* and *Ireland* respectively, to cause, at their discretion, an allowance not exceeding the sum of eight-pence *per* day to be made to such poor person out of any money in their hands respectively arising from the revenue of excise." Allowance to excise prisoners.

§ 119. "In case any information shall be commenced and brought to trial or hearing for the condemnation of any goods, commodities, or chattels seized *as forfeited* under or by virtue of On trial for seizures, if the judge shall

7&8 G. 4. c. 53.

certify probable cause of seizure, the officer shall not be liable to action.

this act, or any other act or acts of parliament relating to the revenue of excise, wherein a verdict or decision shall be given or made for the claimant or claimants thereof, and it shall appear to the judge or court before whom the same shall be tried or heard, that there was a probable cause of seizure, such judge or court shall certify upon the record or other written proceedings on such information, that there was a probable cause for making such seizure, and in such case the officer of excise, or person who made or assisted in making such seizure, shall not be liable to any action, indictment, or other suit or prosecution on account of such seizure, or of the detention of any such goods, commodities, or chattels; and in case any action, indictment, or other suit or prosecution shall be brought to trial or hearing against any officer of excise or person, on account of the seizing of any such goods, commodities, or chattels, or of the detention thereof (whether any information shall have been or shall be brought to trial or hearing for the condemnation of the same or not), and a verdict or sentence shall be given thereupon against the defendant or defendants therein, if the court or judge before whom such action, indictment, or other suit or prosecution shall be tried or heard, shall certify in like manner as aforesaid that there was probable cause for such seizure, then and in such case the plaintiff or plaintiffs therein, besides the goods, commodities, and chattels respectively so seized or the value thereof, shall not be entitled to more than two-pence damages, nor to any costs of suit, and the defendant or defendants therein shall not be imprisoned, nor be fined more than one shilling thereon."

In actions against officers, if the judge shall certify, plaintiff shall not be entitled to more than 2d. damages.

§ II. (i) Appeal.

Appointment of commissioners of appeal.

By stat. 7 & 8 G. 4. c. 53. § 81. "It shall be lawful for the lord high treasurer, or any three or more of the commissioners of the treasury, from time to time, under his hand and seal or under

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upon being served with such notice, and they are hereby respectively authorised and required, at such place and at such time as they shall in that behalf appoint, to hear, adjudge, and finally determine such appeal; and in case any officer who shall exhibit any information, or any person or persons against whom any information shall have been exhibited, or who shall appear and claim any goods, commodities, or chattels alleged to be forfeited in any information exhibited before any justice or justices of the peace as aforesaid, shall feel aggrieved by the judgment given thereon by such justices, it shall be lawful for such officer, or such person or persons, upon giving such notice as hereinafter mentioned, to appeal therefrom to the justices assembled at the next general quarter sessions of the peace, (or if there be not one week between the time of giving such notice and the next general quarter sessions, then to the general quarter sessions of the peace next after the expiration of one week,) to be holden in and for the county, shire, division, city, town, or place in which such judgment so appealed against shall have been given; and it shall be lawful for the justices of the peace at such general quarter sessions, upon being served with such notice, and they are hereby respectively authorised and required, at such general quarter sessions, to hear, adjudge, and finally determine such appeal; and if upon any such appeal, either to the commissioners of appeal, or justices of the peace at quarter sessions, any defect in form shall be found in the information, or in any part of the proceedings thereon or relating thereto, or in the record thereof, every such defect of form shall thereupon be rectified and amended by order of such commissioners of appeal, or of such justices, or the major part of them assembled at such general quarter sessions, before whom respectively such appeal shall be brought; any thing in this act, or any other act or acts of parliament, to the contrary notwithstanding."

7&8 G. 4. c. 53.

Appeal from justices of quarter sessions.

Defects of form cured upon appeal.

§ 83. "Provided always, that no such appeal as aforesaid shall be allowed, unless the party or parties appellant shall, at and immediately upon the giving of the judgment appealed against, give notice in writing of such appeal to the commissioners of excise or justices of the peace respectively from whose judgment such appeal shall be made, and also to the adverse party or parties on such appeal, and shall lodge such notice at the office or with the registrar of the commissioners of appeal, or with the clerk of the peace for the justices of the peace at such general quarter sessions as aforesaid, respectively, by and before whom such appeal is to be finally adjudged and determined; and no such appeal as aforesaid shall be heard, unless the party or parties appellant on such appeal shall, within one week at least before such appeal is to be finally adjudged and determined, give notice in writing to the adverse party or parties on such appeal of the time and place where such appeal is to be heard: Provided always, that where the judgment appealed against shall be a conviction in any penalty or penalties of the party or parties appellant, such party or parties shall also, within three days next after the giving of the judgment appealed against, place and deposit in the hands of the commissioners of excise, or of the collector of excise in whose collection, or of the supervisor of excise in whose district the information shall have been exhibited, the amount of the penalty or penalties in which such party or parties shall have been convicted, or of the sum or sums *of money to which such* penalty or penalties shall

No appeal allowed unless a notice of appeal given.

No appeal to be heard unless notice of trial given.

Deposit shall be made in certain cases.

7&8G.4. c.53. have been mitigated; or where the judgment appealed against shall be either for or against the condemnation of any goods, commodities, or chattels seized as forfeited, such goods, commodities, and chattels shall be left and deposited with the commissioners of excise, or the collector of excise in whose collection, or the supervisor of excise in whose district the information shall have been exhibited, until the final adjudication and determination of such appeal."

Commissioners of appeal, or quarter sessions, on appeal to examine only the evidence before given, and in case of any new judgment to have the like power of mitigation as the original justices.

§ 84. "Upon every such appeal it shall be lawful for the commissioners of appeal, or the justices of the peace at the general quarter sessions respectively, before whom respectively any such appeal shall be brought, and they are hereby respectively authorised and required to proceed to re-hear upon oath and to re-examine the same witness and witnesses, and to re-consider the same evidence, and the merits of the case whereon the original judgment appealed against shall have been given, and they shall not examine any evidence, or any witness or witnesses, other than or different from the evidence and the witness or witnesses which and who shall have been before examined before the commissioners of excise or justices of the peace respectively, at the trial and hearing of the information upon which the original judgment shall have been given; and such commissioners of appeal, and justices of the peace at general quarter sessions, are hereby respectively authorised and empowered, on any such appeal, to reverse or confirm in the whole or in part the judgment appealed against, or to give such new or different judgment as they in their discretion shall in that behalf think fit; and such commissioners of appeal, and justices of the peace at general quarter sessions respectively, shall in any such new or different judgment have the same power of mitigation as is herein-before by this act given to justices of the peace and commissioners of excise in judgments respectively given by them: Provided always, that it shall be lawful for such commissioners of appeal, and justices of the peace at such general quarter sessions respectively, as aforesaid,



justices of the peace in any other part of the U. K., within whose jurisdiction respectively any person or persons chargeable with any duty of excise shall have been charged therewith, upon complaint to them respectively made by any such person or persons, of any overcharge in that behalf made by any officer of excise, within twelve calendar months next after the making of such charge, and such commissioners and justices are hereby respectively authorised and required to hear, adjudge, and determine such complaint, and to examine the witness or witnesses upon oath, who shall be thereupon produced, as well on the behalf of the person or persons making such complaint as on the behalf of H. M., and of all parties therein concerned, and shall thereupon, by warrant under their hands, discharge or acquit such person or persons of so much of such charge as shall be made out and proved before such commissioners of excise or justices of the peace respectively, to have been overcharged; and if such person or persons shall, before such acquittal, have paid any money upon or in respect of such overcharge, it shall be lawful for the commissioners of excise or the commissioner or commissioners and assistant commissioners of excise in *Scotland* and *Ireland* respectively, and they are hereby respectively required, upon such acquittal as aforesaid, to repay to such person or persons out of the public monies in their hands, or at their discretion, to allow out of the next duties becoming payable by such person or persons so much money as shall have been so paid as aforesaid; any thing in this act or in any other act or acts of parliament to the contrary thereof in anywise notwithstanding: Provided always, that no such complaint shall be heard before the said commissioners of excise, unless the same shall be entered by or on behalf of the complainant in a book to be kept for that purpose in the office of the solicitor of excise, for the summary jurisdiction at the chief office of excise, stating the particulars thereof, and the name and place of residence of every such complainant; and upon every such complaint being so entered, a notice shall be given by the said commissioners of the time and place by them appointed for the hearing of such complaint; and if such complainant shall not appear at the time and place appointed for the hearing of any such complaint, it shall be lawful for the said commissioners, or any three or more of them, to dismiss such complaint, upon proof of notice of the time and place appointed for the hearing of such complaint having been given to such complainant, or left at the place mentioned in such complaint-book as aforesaid, to be the place of the residence of such complainant; and no such complaint shall be heard before any justices of the peace, unless a notice in writing of the time and place of hearing thereof (which notice shall contain and set forth the ground and substance of such complaint) shall be given to the collector of excise in whose collection, or to the supervisor of excise in whose district, such overcharge shall have been made, within eight days at the least before the time appointed for the hearing of such complaint; and provided always, that the payment of any duty with which any such complainant as aforesaid shall have been charged, or any proceedings for the recovery of such duty, shall not be delayed or suspended by reason of the making of any such complaint, or of the same being depending.'

7&8G.4. c.53.

determined by any three commissioners or two justices, in their respective jurisdictions, within twelve months after.

No complaint shall be heard in London unless entry thereof be made at the chief office, or, if in the country, unless notice be given to the excise officer.

Not to suspend the payment of duty or any proceedings.

§ II. (*l*) Oaths and Affirmations.

7 & 8 G. 4. c. 53. Officers authorised to administer oaths.

By stat. 7 & 8 *G.* 4. *c.* 53. § 29. "In all cases where any oath is or shall by this act, or any other act or acts of parliament relating to the revenue of excise, be required and directed to be made or taken by any person or persons whomsoever, it shall be lawful for the commissioners or assistant commissioners, or any commissioner or assistant-commissioner of excise, or for the commissioners of appeal under this act, or the justices or any justice of the peace, or officers or any officer or other persons or person before whom such oath is required to be made or taken, and they and he respectively are and is hereby authorised to administer and receive such oath accordingly."

Quaker's affirmation may be accepted in lieu of an oath.

§ 30. "In every case in which an oath is by this act, or any other act or acts of parliament relating to the revenue of excise, required and directed to be made or taken, and in all proceedings for any misdemeanor, or for the recovery of any penalty incurred, or for the condemnation of any goods, commodities, or chattels seized as forfeited under or by virtue of this act, or any other act or acts of parliament relating to the revenue of excise, if the person required to make or take such oath shall be and be known to be one of the people called *Quakers*, then and in every such case the solemn affirmation or declaration of such Quaker shall be administered and received as aforesaid, in lieu of such oath; any act or acts of parliament to the contrary thereof in anywise notwithstanding."

Penalties on perjury and subornation of perjury.

§ 31. "If any person who shall make or take any such oath or affirmation or declaration, shall wilfully and knowingly swear or affirm or declare falsely to any matter or thing therein, every such person, being duly convicted thereof, shall incur and suffer the pains and penalties to which persons are or shall be liable for wilful and corrupt perjury; and if any person shall corruptly procure or suborn any other person to swear or affirm or declare

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the treasury, shall from time to time make or prescribe, and transmit to the said comptroller and auditor respectively, for their direction and guidance in their respective offices." 7&8G.4. c.53.

§ 50. "All money, bills, notes, drafts, checks, or orders for payment of money, received by or coming into the hands of the receiver-general of excise on account of the revenue of excise (except as is hereinafter excepted), shall be paid by him into the hands of the governor and company of the bank of *England*, that is to say, all money, notes, drafts, checks, and orders, either on the same day or on the day next after the same shall have been received, and all bills on the day on which the same, having been first duly accepted, shall have been indorsed by the commissioners of excise, or any two of them, for which money, bills, notes, drafts, checks, and orders, the entry in the book hereinafter mentioned shall be a sufficient discharge; and all such money, bills, notes, drafts, checks, and orders, so to be paid to the governor and company of the bank of *England*, shall be placed to an account to be raised in the books of the said governor and company, and to be intituled 'The account of the public monies of the receiver-general of excise,' inserting the name of such receiver-general for the time being." Monies, &c. received by the receiver-general of excise to be paid into the bank forthwith, to the account of the receiver-general of excise.

§ 51. "Provided always, that it shall be lawful for such receiver-general to retain and keep in his own hands at the close of each day, for the payment of casual and ordinary and daily demands, out of the money so received by him as such receiver-general, any sum not exceeding 30,000*l*., or such further sum not exceeding 50,000*l*., over and above the said 30,000*l*., as shall be directed or authorised by the commissioners of excise to be retained by such receiver-general, or such further sum of money as shall or may from time to time, by a permission in writing under the hand or hands of the lord high treasurer, or of any three or more of the commissioners of the treasury, be allowed to be retained by such receiver-general." What sums may be retained by the receiver-general in his hands, for the payment of ordinary and daily demands.

§ 52. "The governor and company of the bank of *England*, or some person duly authorised on their behalf, shall daily, upon receiving any money, bill, note, draft, check, or order from the receiver-general, make an entry of the money, and of every bill, note, draft, check, and order so received, in a book to be provided by the said governor and company, with the approbation of the lord high treasurer or commissioners of the treasury, and sent for that purpose by such receiver-general; and such book shall be forthwith, after the making of such entry, re-delivered to the persons making such payment, and shall be inspected daily after its return by the excise-comptroller of the cash or his clerk, (such clerk being first duly authorised by such comptroller, and for whose conduct therein he shall be answerable), who shall compare the same with the book kept by such comptroller of the cash, for the purpose of seeing that the receiver-general constantly pays into the bank all the money, bills, notes, drafts, checks, and orders which he is required to do under the provisions of this act; and any default which such comptroller of the cash or his clerk (duly authorised as aforesaid), may discover in that behalf shall, by such comptroller of the cash, be immediately reported to the commissioners of excise." Bank-book to be kept and compared by the comptroller of the cash, and any default stated to the commissioners.

7&8G.4. c.53.

Mode in which payments are to be made into the exchequer.

§ 53. "The receiver-general of excise shall pay, or cause to be paid, into the receipt of the exchequer at *Westminster*, all money placed to the account of the receiver-general as aforesaid in the bank of *England*, on such days in every week respectively as the lord high treasurer, or any three or more of the commissioners of the treasury shall from time to time direct, order, or appoint, and in such manner as hereinafter mentioned; that is to say, the said receiver-general or his clerk (duly authorised by him for that purpose, and for whose conduct therein he shall be answerable,) shall make an order upon the governor and company of the bank of *England*, which order shall be countersigned by the excise-comptroller of the cash, to write off from his account the sum desired; and the said governor and company, or some person duly authorised on their behalf, shall thereupon write off such sum, and deliver a note, drawn (and which, for greater security, shall be cancelled,) in such manner and form as shall be approved of by the lord high treasurer or commissioners of the treasury, for the amount, to the said receiver-general or his clerk, who shall pay the same into the exchequer; and the bank-clerks attending there shall receive such note as cash to the amount thereof; and it shall not be lawful for the governor and company of the bank of *England* to pay or transfer from the account of the receiver-general any part of the money so deposited and placed to such account, otherwise than into the exchequer in manner aforesaid, or to deliver any bill of exchange, promissory note, draft, check, or order for the payment of money, save and except to H. M.'s solicitor of excise in *England*, or his clerk, upon his application for the same, countersigned by the said receiver-general or his clerk, and such comptroller of the cash or his clerk, for the sole purpose of prosecuting an extent for the recovery of the money for which any such bill of exchange, promissory note, draft, check, or order for the payment of money shall have been given; and in such case the commissioners of excise shall be immediately acquainted therewith,

No bills, notes, &c. to be re-delivered, except to solicitor, for the purpose of prosecution, of which the commissioners to be forthwith informed.

[redacted]

which shall be actually received by them from and on account of such receiver-general as aforesaid, except such as may have been delivered out for the purpose of prosecuting an extent as aforesaid, and may not have been returned into the bank of *England.*" 7&8 G. 4. c. 53.

§ 56. "If any person shall forge or counterfeit, or shall cause or procure to be forged or counterfeited, or shall knowingly and wilfully aid or assist in forging or counterfeiting, the name or handwriting of any receiver-general of excise, or of any excise comptroller of the cash as aforesaid, or of any of the persons duly authorised as aforesaid, to any draft, instrument, or writing whatsoever, for or in order to the receiving or obtaining any of the money, bills, notes, drafts, checks, or orders for the payment of money, in the hands or custody of the governor and company of the bank of *England*, on account of such receiver-general as aforesaid; or if any person shall forge or counterfeit, or shall cause or procure to be forged or counterfeited, or shall knowingly and wilfully aid or assist in the forging or counterfeiting, of any draft, instrument, or writing, in the form of a draft, instrument, or writing made by any receiver-general of excise, or by any excise-comptroller of the cash as aforesaid, or by any person or persons authorised as aforesaid, or shall utter or publish any draft, instrument, or writing so forged or counterfeited, knowing the same to be forged or counterfeited, with an intention to defraud H. M., or any person whomsoever; every person so offending, and being thereof lawfully convicted, shall be and is hereby declared and adjudged to be guilty of felony, and shall suffer death as in cases of felony without benefit of clergy." Forging any instrument to obtain money from the bank, on account of the receiver-general, felony without benefit of clergy.

§ II. (n) Actions against Excise Officers, &c.

By stat. 7 & 8 *G.* 4. *c.* 53. § 114. "No writ, summons, or process shall be sued out against or served upon, nor shall any action be brought, raised, or prosecuted against any officer of excise, or any person employed in the revenue of excise, or any person acting in the aid and assistance of any such officer or person so employed as aforesaid, for any thing done in pursuance of this act, or any other act or acts of parliament relating to the revenue of excise, until after the expiration of one calendar month next after notice in writing (*a*) shall have been delivered to such officer or person as aforesaid, or left at the usual place of his abode, by the attorney or agent for the person or persons who shall intend No action against any officer of excise without a month's notice, expressing the names and places of abode of the plaintiff and his attorney.

(*a*) An excise officer is entitled to notice for an act not warranted by his official capacity, if done *bonâ fide* in the supposed execution of his duty, such as the assaulting an innocent person, whom he suspects to be a smuggler, employed in running goods. *Daniel* v. *Wilson*, 5 *T. R.* 1.

It seems also that an extra exciseman, being considered an excise officer in every respect, except that he is not appointed by the board of excise by warrant or deputation, is entitled to notice for any thing done in pursuance of the excise laws; or, at least, that he is entitled to it, as a person acting under a regular excise-officer in making search by his directions, though such officer be not present. *Clements and Ux.* v. *Kern*, 2 *Smith's Rep.* 220.

3&4 G. 4. c. 53.

to sue out such writ or process, or to bring, raise, or prosecute such action as aforesaid; in which notice shall be clearly and explicitly contained and set forth the cause of such action, the time when and the place where such cause of action arose, the name and place of abode of the person or persons in whose name or names such action or suit is intended to be brought, and the name and place of abode of the said attorney or agent; and that a fee of 20s., and no more, shall be paid for the preparing and serving of every such notice."

Limitation of action against officers.

§ 115. "If any action or suit shall be brought, raised, or commenced against any officer of excise, or any person employed in the revenue of excise, or any person acting in the aid and assistance of such officer or person so employed as aforesaid, for any thing done in pursuance of this act, or any other act or acts of parliament relating to the revenue of excise, such action or suit shall be commenced within the space of three calendar months next after the cause of action shall have arisen, and shall be laid and prosecuted in the proper county or place wherein the same arose; and the defendant or defendants in any such action or suit may plead the general issue, and give this act and the special matter in evidence thereunder at any trial to be had thereupon; and if afterwards a verdict shall pass the defendant or defendants, or the plaintiff or plaintiffs shall be nonsuited, or shall discontinue such action or suit, or if judgment shall be given against such plaintiff or plaintiffs upon demurrer or otherwise, then and in every such case such defendant or defendants shall have treble costs awarded to him or them against such plaintiff or plaintiffs."

Venue.

General issue.

Treble costs.

Tender of amends may be made within one month after notice given, and

§ 116. "It shall be lawful to and for any officer of excise, or any person employed in the revenue of excise, or any person acting in the aid and assistance of such officer or person so employed as aforesaid, to whom such notice shall be given as aforesaid, at any time within one calendar month next after such notice shall have been given, to tender amends to the person or persons

7&8 G. 4. c. 53.

Defendant may pay money into court before issue joined.

§ 117. "In case any such officer of excise, or any person employed in the revenue of excise, or any person acting in the aid and assistance of such officer or person so employed as aforesaid, shall neglect to tender amends, or shall have tendered insufficient amends before action or suit brought, raised, or commenced, it shall be lawful for the defendant or defendants, by leave of the court in which such action or suit shall be brought, raised, or commenced, at any time before issue joined, to pay into court such sum of money as such defendant or defendants shall think fit, whereupon such proceedings, orders, and judgments shall be had, made, and given in and by such court, as in other actions where the defendant is allowed to pay money into court."

No evidence to be given of a cause of action not expressed in the notice.

§ 118. "Provided always, that no such plaintiff or plaintiffs shall, on the trial of any such action or suit, be permitted to produce any evidence of any cause of action, except such as shall be contained and set forth in such notice as aforesaid, nor shall recover any verdict against any such officer or person as aforesaid, unless it shall be proved on the trial of such action or suit that such notice was given; and the defendant or defendants in such action or suit shall, in default of such proof, recover a verdict with such costs as aforesaid."

On trial for seizures, if the judge shall certify probable cause of seizure, the officer shall not be liable to action.

§ 119. "In case any information shall be commenced and brought to trial or hearing for the condemnation of any goods, commodities, or chattels seized as forfeited under or by virtue of this act, or any other act or acts of parliament relating to the revenue of excise, wherein a verdict or decision shall be given or made for the claimant or claimants thereof, and it shall appear to the judge or court before whom the same shall be tried or heard that there was a probable cause of seizure, such judge or court shall certify upon the record or other written proceedings on such information, that there was a probable cause for making such seizure, and in such case the officer of excise, or person who made or assisted in making such seizure, shall not be liable to any action, indictment, or other suit or prosecution on account of such seizure, or of the detention of any such goods, commodities, or chattels; and in case any action, indictment, or other suit or prosecution shall be brought to trial or hearing against any officer of excise or person, on account of the seising of any such goods, commodities, or chattels, or of the detention thereof, (whether any information shall have been or shall be brought to trial or hearing for the condemnation of the same or not,) and a verdict or sentence shall be given thereupon against the defendant or defendants therein, if the court or judge before whom such action, indictment, or other suit or prosecution shall be tried or heard, shall certify in like manner as aforesaid that there was probable cause for such seizure, then and in such case the plaintiff or plaintiffs therein, besides the goods, commodities, and chattels respectively so seized or the value thereof, shall not be entitled to more than 2*d.* damages, nor to any costs of suit, and the defendant or defendants therein shall not be imprisoned, nor be fined more than 1*s.* thereon."

In actions against officers, if the judge shall certify, plaintiff shall not be entitled to more than 2*d.* damages.

§ II. (o) Forging Debentures.

41 G.3. (U.K.) c.91. Forging debentures.

By stat. 41 *G.3.* (*U.K.*) *c.*91. § *5.* "If any person shall counterfeit or forge, or cause to be counterfeited or forged, any certificate authorised or required to be granted by any officer of excise, by virtue of any act in force relating to the duties of excise, or shall knowingly give any false certificate, or receive any false certificate, or alter or erase any certificate after the same shall have been granted by any officer of excise, or shall knowingly publish or make use of any certificate so counterfeited, forged, false, altered, or erased, every person so offending, being thereof convicted, shall be adjudged guilty of felony, and be transported for seven years."

38 G.3. c.54.

By stat. 38 *G.3. c.* 54. § 9. "If any person shall counterfeit or forge, or cause to be counterfeited or forged, any debenture, in any case in which a debenture is by any act relating to the duties of excise required to be granted, or knowingly make use of any counterfeited or forged debenture, every person so offending, being thereof convicted, shall be deemed guilty of felony, and suffer death without benefit of clergy."

52 G.3. c.143. Punishment for forging debentures for return of money from duties of customs or excise.

By stat. *52 G.3. c.*143. § 10. "If any person shall, with intent to defraud H. M., falsely make, forge, counterfeit, or alter, or cause or procure to be falsely made, &c., or willingly assist in falsely making, &c. any debenture, or any certificate for the payment or return of any money, or any part of any such debenture or certificate, or any signature thereon, in any case in which such debenture or certificate is by any act or acts of parliament relating to the duties of customs or excise required or directed to be given or granted; or shall wilfully, with such intent as aforesaid, utter, publish, or make use of any such debenture or certificate, or part thereof, so being wholly or in part falsely made, &c., he shall on conviction be adjudged guilty of felony, and shall suffer death as a felon, without benefit of clergy."

III. Of the several Particulars under the Management of the Commissioners of Customs and Excise.

It is proposed to omit all enumeration of the several duties imposed upon excisable articles, since they not only consist of many different charges, but also vary continually in their amount and rate, so that such a description would probably be, within a few months, perfectly useless. For the same reason, the bounties and drawbacks will be no further noticed than as they may be connected with regulations which it is the duty of justices of the peace to enforce.

It is proposed to arrange the matters relating to the excise under the following heads; *viz.*

(1.) *Ale and beer.*
(2.) *Things sold by auction.*
(3.) *Bricks and tiles.*

(4.) *Candles.*
(5.) *Coffee, tea, chocolate, and cocoa-nuts.*
(6.) *Cider, perry, mum, metheglin, and mead.*
(7.) *Glass.*
(8.) *Hops.*
(9.) *Leather.*
(10.) *Linen cloth, silks, cottons, and calicoes.*
(11.) *Malt.*
(12.) *Paper.*
(13.) *Plate.*
(14.) *Salt.*
(15.) *Soap.*
(16.) *Spirituous liquors.*
(17.) *Starch, hair-powder, and stone-blue.*
(18.) *Stone bottles.*
(19.) *Sweets.*
(20.) *Tobacco and snuff.*
(21.) *Vinegar, acetous acid, and verjuice.*
(22.) *Wine.*
(23.) *Wire.*

§ III. (1.) *Ale and beer.* See title **Alehouses**, Vol. I.

[12 C. 2. c. 24. — 15 C. 2. c. 11. — 22 & 23 C. 2. c. 5. — 1 W. sess. 1. c. 24. — 7 & 8 W. c. 30. — 8 & 9 W. c. 19. — 12 & 13 W. c. 11. — 2 G. 3. c. 14. — 5 G. 3. c. 43. — 24 G. 3. sess. 2. c. 41. — 25 G. 3. c. 73. — 27 G. 3. c. 13. — 28 G. 3. c. 37. — 32 G. 3. c. 8. — 42 G. 3. c. 38. — 43 G. 3. c. 38. — 43 G. 3. c. 69. — 49 G. 3. c. 81. — 55 G. 3. c. 30. — 56 G. 3. c. 58. — 59 G. 3. c. 32. — 1 & 2 G. 4. c. 22. — 3 G. 4. c. 18. c. 27. — 4 G. 4. c. 51. — 5 G. 4. c. 54. — 6 G. 4. c. 58. — 6 G. 4. c. 81. — 9 G. 4. c. 61. — 9 G. 4. c. 68.]

Duties and drawbacks.

For the duties on ale and beer made in *England*, see stats. 43 *G.* 3. *c.* 69. and 3 *G.* 4. *c.* 31.

For the drawbacks on the same, see stats. 59 *G.* 3. *c.* 53. and 3 *G.* 4. *c.* 18.

For the duties, allowances, and drawbacks on ale and beer made in *Scotland* or *Ireland*, see stat. 6 *G.* 4. *c.* 58.

6 G. 4. c. 81. Former duties on licences repealed.

By stat. 6 *G.* 4. *c.* 81. (*a*) § 1. From 5th *July*, 1825, all the duties on excise licences granted by any act of parliament in force at the passing of the act are *repealed*; except in all cases relating to arrears of duty, or any fine or penalty incurred before 5th *July*, 1825, and remaining unpaid; and also except as to any excise licence or licences theretofore granted, and any bond or bonds given by any excise trader before said 5th *July*, 1825, and then in force and unexpired.

Duties on licences for brewers of beer.

By § 2. From 5th *July*, 1825, every brewer of table or other beer, in *Great Britain* and *Ireland*, for sale, shall annually take

(*a*) Intituled "An act to repeal several duties payable on excise licences in *G. B.* and *Ireland*, and to impose other duties in lieu thereof; and to amend the laws for granting excise licences."

5 G. 4. c. 81.

out an excise licence for that purpose, and shall for every such licence pay the annual sums following; that is to say,

Every brewer of table-beer only for sale, if the quantity of beer brewed by such brewer within the year ending 10th *October*, previous to taking out such licence, shall not exceed 20 barrels, 10*s.*; if exceeding 20, and not exceeding 50 barrels, 1*l.*; if exceeding 50, and not exceeding 100 barrels, 1*l.* 10*s.*; if exceeding 100 barrels, 2*l.*

And every brewer of beer (other than table-beer only) for sale, if the quantity of beer brewed by such brewer within the year ending the 10th day of *October*, previous to taking out such licence, shall not exceed 20 barrels, 10*s.*; if exceeding 20, and not exceeding 50 barrels, 1*l.*; if exceeding 50, and not exceeding 100 barrels, 1*l.* 10*s.*; if exceeding 100, and not exceeding 1000 barrels, 2*l.*; if exceeding 1000, and not exceeding 2000 barrels, 3*l.*; if exceeding 2000, and not exceeding 5000 barrels, 7*l.* 10*s.*; if exceeding 5000, and not exceeding 7500 barrels, 11*l.* 5*s.*; if exceeding 7500, and not exceeding 10,000 barrels, 15*l.*; if exceeding 10,000, and not exceeding 20,000 barrels, 30*l.*; if exceeding 20,000, and not exceeding 30,000 barrels, 45*l.*; if exceeding 30,000, and not exceeding 40,000 barrels, 60*l.*, or, if exceeding 40,000 barrels, 75*l.* That every person who shall first become a brewer of beer for sale, on taking out such licence as aforesaid, for that purpose, shall pay the sum of 10*s.*, and within 10 days after 10th *October* next, after taking out such licence, pay such further additional sum as with the said 10*s.* shall amount to the duty herein-before mentioned, according to the number of barrels of beer brewed within the preceding year, or period for which such licence was granted.

Duty on licence of person first becoming brewer.

Every brewer of beer for sale, who shall retail such beer to be consumed elsewhere than on his, her, or their premises, 5*l.* 5*s.*

Every person not being a brewer of beer, who shall sell strong beer only, in casks containing not less than 4½ gallons imperial standard gallon measure, or in not less than 2 dozen reputed quart bottles at one time, to be drank or consumed elsewhere than on his, her, or their premises, 3*l.* 3*s.*

Every person who shall be duly authorised by justices of the peace to keep a common inn, alehouse, or victualling-house, and who shall sell beer, cider, or perry by retail, to be drank or consumed in his, her, or their house or premises, if the dwelling-house in which such person shall reside or retail beer, cider, or perry as aforesaid at the time of taking out such licence, shall not, together with the offices, courts, yards, and gardens therewith occupied, be rated under the authority of any act or acts of parliament for granting duties on inhabited houses, at a rent of 20*l.* per annum or upwards, or shall not be rented or valued at such rent or annual value, or upwards, 1*l.* 1*s.*

And if rated, rented, or valued as aforesaid at 20*l.* *per annum* or upwards, 3*l.* 3*s.*

The said duties to be under the collection and management of the commissioners of excise.

Brewers in Ireland to be deemed, for the purposes of

§ 3. Reciting that "the duty imposed by this act, on every licence to be taken out by any brewer or brewers of beer for sale, is rated according to the quantity of beer brewed by the person or persons taking out such licence; and that no account is taken

or kept by the officers of excise in *Ireland* of the quantity of beer brewed there for sale, but of the malt only used and employed by all and every brewer or brewers there for that purpose;" it is enacted, "that all and every brewer or brewers of beer for sale in *Ireland* shall, for the purpose of fixing and regulating the rate and amount of duty to be paid by such brewer or brewers for the licence to be taken out by him, her, or them, under this act, be deemed to have brewed one barrel of beer for every two bushels of malt used or employed by such brewer or brewers in brewing; and shall, for every licence to be taken out by him, her, or them, under this act, for brewing beer for sale, pay such amount of duty, according to the rate by this act imposed, as shall be correspondent to the quantity of beer which he, she, or they shall be deemed to have brewed as aforesaid."

6 G.4. c.81.

this act, to have brewed one barrel of beer for every two bushels of malt employed in brewing.

§ 5. Reciting that "the duty upon certain licences authorised and required to be taken out by this act, is imposed at and according to the rent at which the premises used for the purpose or purposes mentioned in such licence are rated to the duty on inhabited houses;" and that "many houses or premises in different parts of the U. K., for or in respect of which such licences may be required, may not be so rated;" it is enacted, "that in all cases, and in any part of the U. K. in which any such house or premises shall not be so rated as aforesaid, it shall and may be lawful, in order to ascertain the rent or annual value of such house or premises, for the person or persons, being the tenant or occupier thereof, who shall apply for any such licence upon which the duty is so imposed as aforesaid, to produce to the person or persons authorised to grant such licence as aforesaid, a certificate, signed by himself and the owner or landlord of the said house and premises, stating the true rent paid by or for which such house or premises is or are let to such tenant or occupier; or if the true rent, by reason of the payment of any premium, or performance of any condition or otherwise, shall not be reserved and payable to the owner or landlord by the tenant or occupier of such house or premises, then and in such case stating the estimated rent or true annual value of such house or premises, and the rate of duty payable by such tenant or occupier for such licence, shall be paid, taken, and received, according to the rent or value so certified: Provided always, that if the person or persons authorised to grant such licence shall be dissatisfied with the rent or value so certified, he or they shall and is and are hereby authorised and required to adopt such other means as the commissioners of excise shall think fit, and shall from time to time direct, to ascertain the true rent or annual value of such house or premises; and that thereupon the rate of duty payable for and upon such licence shall be paid, taken, and received, according to the rent or annual value of the house and premises so ascertained as last aforesaid; any thing herein or in any other act or acts of parliament to the contrary thereof notwithstanding."

Where the house and premises shall not be rated, the rent or annual value is to be certified by the tenant and landlord, and if such certificate be unsatisfactory, the commissioners of excise shall adopt other means for ascertaining the true rent or value thereof, which shall be conclusive.

§ 6. "Every excise licence which is authorised or required to be taken out by this act shall be granted, and the duty thereupon imposed shall be paid in and throughout the U. K. in manner and form following; that is to say, if any such licence shall be taken out within the limits of the head or chief office of excise in *London*, then such licence shall be granted under the hands and

Licences to be granted within the limits of the chief office of excise in London, by the commissioners

6 G.4. c.81.

of excise, or such person as they may employ for that purpose, and within the limits of the cities of Edinburgh and Dublin respectively, by the commissioners or assistant commissioners there, or such persons as they may employ for that purpose, and elsewhere by the collectors and supervisors of the respective excise collections, on payment of the duties.

seals of two or more of H. M.'s commissioners of ex
such person or persons as such commissioners shall fro
time employ for that purpose, and the duty thereupon
as aforesaid shall be paid at such head or chief office a
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within the limits of the cities of *Edinburgh* or of *Dubli*
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H. M.'s commissioner or commissioners and assistant
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or of such person or persons as such commissioner or
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for that purpose, and the duty thereupon imposed shall
the chief office of excise in *Edinburgh* or *Dublin* respec
the time of granting the licence; or if such licence shall
out in any other part of the U. K. without such respect
as in that behalf respectively aforesaid, then and in ev
case the same shall be granted under the hands and sea
collector, or other person having charge of the collec
supervisor of excise within the collection and district
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be paid to such collector or other person as aforesaid at
of granting the licence; and such respective commiss
excise in *England*, and commissioner or commissioners a
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respectively, and the person or persons by them respecti
ployed as aforesaid, and every collector or other perso
charge of the collection, and supervisor as aforesaid, i
hereby respectively authorised and required to grant an
every such licence to the person or persons who shall
and be legally entitled to receive the same, forthwith u
ment of the duty or sum of money thereupon imposed, fi
all poundage, fee, gratuity, or any other payment whatso

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the time of granting such licence, it shall and may be lawful for such person or persons, except persons exercising or carrying on the trade or business of a brewer of beer in *Ireland*, or the trade or business of an auctioneer, or person selling any goods or chattels, lands, tenements, or hereditaments by auction in any part of the U. K., to take out such licence without giving bond as aforesaid; and that from and after the 5th day of *July*, 1825, where bond is given by any person or persons exercising or carrying on the trade or business of a brewer of beer for sale in *Ireland*, or by any person exercising or carrying on the trade or business of an auctioneer, or person selling any goods or chattels, lands, tenements, or hereditaments by auction, in any part of the U. K., such bond shall bear date with the day or date of the licence taken out for such purpose, and shall be binding upon the person or persons by whom such bond was made and entered into from the day of such date, and not from the day on which the same may have been executed or delivered; any law or usage to the contrary thereof notwithstanding: Provided always, that nothing herein contained shall extend or be deemed or construed to extend to annul or make void any bond heretofore made, and which shall be in force and unexpired on the said 5th day of *July*, 1825, but that every such bond as last aforesaid shall remain and continue in force until the day of the expiration thereof; any thing herein contained to the contrary notwithstanding."

6 G. 4. c. 81.

auctioneers whose bonds shall bear date with that of the licence, and be binding upon them from that day.

§ 10. "No one licence taken out under or by authority of this act, by any person or persons, except auctioneers and maltsters, shall authorise or empower such person or persons to exercise or carry on the trade or business mentioned in such licence in more than one separate and distinct set of premises, such premises being all adjoining or contiguous to each other, and situate in one place, and held together for the same trade or business, and of which he, she, or they shall have made lawful entry, to exercise or carry on therein his, her, or their trade or business as aforesaid, at the time of granting such licence, but that a separate and distinct licence shall be taken out by all and every such person or persons as aforesaid, except as aforesaid, to exercise or carry on his, her, or their trade or business as aforesaid, at or in any other or different premises than as before mentioned: Provided always, that where the amount or rate of any such licence shall depend upon the quantity of goods made or manufactured by the person or persons to whom the same is granted, such quantity shall be computed from the respective goods only made or manufactured by such person or persons at the premises in respect of which such licence is granted, and shall not include goods made or manufactured by such person or persons at any other or different premises, for which a separate and distinct licence is required as above mentioned."

No one licence to authorise any person, except auctioneers and maltsters, subject to the lowest rate of duty, to carry on his trade in more than one separate and distinct set of premises.

§ 11. Provided always, and it is further enacted, "that nothing herein contained shall extend to prohibit any person or persons duly licensed to sell beer, cider, or perry by retail, to be drank or consumed in his, her, or their house or premises, or any retailer of spirits, (not being a retailer of spirits in *Ireland*, licensed as a grocer, to trade in, vend, and sell coffee, tea, cocoa-nuts, chocolate, or pepper,) or any retailer of foreign wine, or retailer of sweets or made wines, or of mead or metheglin, he or she being

Not to extend to selling beer, cider, or perry by publicans being licensed beer retailers, or spirits, wine, or sweets, by the licensed re-

6 G. 4 c. 81.

tailers thereof, at fairs or races.

duly licensed respectively for such respective purpose, to carry on his or her trade or business for which he or she respectively shall be so licensed as aforesaid, in booths, tents, or other places, at the time and place, and within the limits of holding any lawful and accustomed fair, by virtue of any law or statute in that behalf, or any public races; provided also, that in all cases in which the house or premises in respect of which any excise licence is or shall be granted shall be burnt down, or otherwise destroyed, or rendered uninhabitable by fire or other unavoidable cause or accident, it shall and may be lawful for the commissioners and assistant commissioners of excise, or collector and supervisor, or other person or persons authorised to grant licences within the district or place in which such house or premises was or were situate, upon due notice thereof to him or them in that behalf given, to authorise and empower, by indorsement on such licence, or otherwise, as the commissioners of excise shall direct, the person or persons authorised to carry on trade or business by such licence at the house or premises so burnt down or otherwise destroyed or rendered uninhabitable, to carry on such trade or business at any other and different house or premises in the same district or place, of which due entry shall be thereupon made by such person or persons at the time of such removal thereto; provided always, that where such licensed person or persons as aforesaid shall be a person or persons by law required to be duly authorised by justices of the peace to keep a common inn, alehouse, or victualling house, it shall not be lawful for the commissioners or assistant commissioners of excise, or such collector and supervisor, or other person or persons authorised to grant licences as aforesaid, to authorise or empower such licensed person or persons as aforesaid, unless such person or persons shall, besides giving such notice as herein-before required, produce to such collector and supervisor, or other person or persons authorised to grant licences as aforesaid, such authority from

Removal of the licence in case of fire or accident.

excisable liquors, (which include *ale* and *beer*, see § 37.) by retail, to be drank or consumed on the premises of the person licensed, shall be granted by the commissioners of excise, or by any officer of excise, to any person whatsoever, unless such person shall have previously obtained from the justices a licence under this act, and which said licence of such justices shall be retained by such person after being produced to the commissioners or officers of excise, and every licence granted by the commissioners of excise, or by any officer of excise, contrary to this provision, shall be null and void to all intents and purposes."

9 G. 4. c. 61.

No excise licence to be granted except to a person licensed under this act.

By stat. 6 *G.* 4. *c.* 81. § 16. "From and after the 5th day of *June*, 1825, all excise licences taken out in the U. K. by any brewer or brewers of beer, or by any distiller or maker, distillers or makers of low wines or spirits, or by any person or persons who shall be duly authorised by justices of the peace to keep a common inn, alehouse, or victualling-house, and who shall take out a licence for selling beer, cider, or perry by retail, to be drank or consumed in the house or premises, or for selling spirits or foreign wine, or sweets or made-wines, or mead or metheglin by retail, under or by virtue of this act, or any other law or laws of excise, (except any excise licence or licences theretofore granted, and which shall be then in force and unexpired,) shall continue and be in force from the day of the date of such licences respectively, until the 10th day of *October* following, on which day in each year all such excise licences (except as aforesaid) shall expire; and that all other excise licences throughout the U. K., except those above specified, and except as above excepted, shall continue and be in force from the day of the date of such licences respectively, until the 5th day of *July* following, on which day in each year all such licences as last aforesaid (except as aforesaid) shall expire; and all and every person or persons who shall have taken out any such licence as aforesaid, and who shall wish or intend to continue the trade or business for which such licence was granted for any longer space of time, shall take out a fresh licence for the year following, to expire on one of such days as herebefore mentioned, according to the nature of the licence by him, her, or them taken out, and shall so renew the same from year to year, so long as he, she, or they shall continue such trade or business, and shall pay in each and every such case the duty thereupon imposed at such time and place as herein-before mentioned; and every such person or persons shall, in every such case as aforesaid, give notice in writing at least 21 days before the expiration of the current licence to him, her, or them before granted, of such his, her, or their intention to continue the trade or business for which such licence was before granted to the collector or supervisor, or other person or persons authorised to grant licences for the district or place at which such trade or business shall be carried on; and in cases where the excise licence is so renewed as aforesaid, and such notice as aforesaid shall have been given, the new licence shall bear date from the day or date of the expiration of the current licences before granted; but in case where such notice shall not have been given as aforesaid, and in all other cases than as aforesaid, the licence shall bear date from the day of the date of the application made for such licence, although and notwithstanding

6 G. 4. c. 81.

Licences taken out by brewers and distillers, and by publicans, as retailers of beer, spirits, or foreign wine, or sweets or made-wines, or mead, or metheglin, shall expire on the 10th of October in each year, and all other licences on the 5th day of July, to be renewed yearly, and notice for renewal given by the trader 21 days at least before the expiration of his current licence; every such licence to bear date from the expiration of the former licence when regularly renewed, and when afterwards or otherwise granted, from the date of the application.

6 G. 4. c. 81.

any such licence may be delivered at any day subsequent date of such application."

Licences may be granted to new beginners for a proportional part of the year, who shall pay duty accordingly, according to the quarter of the year in which the licence shall be taken out.

§ 17. Provided always, and it is further enacted, "tha person or persons shall commence or begin to exercise or c any trade or business, for the exercise or carrying on of w excise licence is required, such person or persons not before taken out any such licence, it shall and may be law the person and persons authorised to grant licences, to gra licence for the remainder of the current year in which such shall be taken out, ending on the 5th day of *July*, or on th day of *October* next following the date of the licence taken such person or persons, according to the nature of such l upon payment of such proportional part of the duty the imposed, in such manner as hereinafter mentioned; that is if such licence shall be taken out at any time within t quarter of the current year in which such licence shall b out, and ending as aforesaid, or in the quarter expiring 10th day of *October*, or on the 5th day of *January* next fo the date of such licence, according to the nature of the taken out, that then the person or persons taking out such shall pay the whole duty imposed upon such licence, in suc ner as herein-before mentioned at the time of granting licence; and if such licence shall be taken out at any time the second quarter of such current year, and ending as af or in the quarter expiring on the 5th day of *January*, or 5th day of *April*, next following the date of such licence, ing to the nature of the licence taken out, the person or taking out such licence shall pay three-fourth parts of th imposed upon such licence, in such manner as herein-befo tioned at the time of granting such licence; and if such shall be taken out at any time within the third quarter of su rent year, and ending as aforesaid, or in the quarter expi the 5th day of *April*, or on the 5th day of *July*, next fo

[redacted]

take out such licence, upon payment of a proportional part only of the duty thereupon imposed; but all and every such person or persons as aforesaid shall pay the whole of such duty, unless the period of time between the expiration of the former licence and the taking out of the new licence shall, at the least, be a period of two years." 6 G.4. c.81.

§ 19. "Where any licence taken out by any brewer or brewers of beer, or by any distiller or maker, distillers or makers of low wines or spirits, or by any person or persons who, being authorised by justices of the peace to keep a common inn, alehouse, or victualling-house, shall have taken out a licence for selling beer, cider, or perry by retail, to be drank or consumed in the house or premises where sold, or for selling spirits, foreign wine, or sweets or made-wines, or mead or metheglin, by retail, in the U. K., under any act or acts of parliament in force in *G. B.* or *Ireland* respectively on or immediately before the said 5th day of *July*, 1825, shall expire between the said 5th day of *July*, 1825, and the 10th day of *October*, 1825, it shall and may be lawful for the person and persons authorised to grant licences within the district or place in which such person or persons respectively carry on trade or business, to grant such person or persons respectively, by whom respectively the former licences were taken out as aforesaid, a licence as a brewer or brewers of beer, or as a distiller or maker, distillers or makers of low wines or spirits, or if duly authorised by justices of the peace to keep a common inn, alehouse, or victualling-house, a licence for selling beer, cider, or perry by retail, to be drank or consumed in the house or premises, or for selling spirits or foreign wine, or sweets or made-wines, or mead or metheglin, for such person or persons respectively to exercise and carry on such respective trades or business for the remainder of the year ending the 10th day of *October* 1825, under the provisions of this act, upon payment of one-fourth part of the duty imposed upon such licences respectively, at the time of granting thereof; and that all such licences shall expire on the 10th day of *October*, 1825, and shall be renewed, or a new licence in that behalf granted, and for the same purpose, for the whole year ensuing, to expire on the 10th day of *October* following; and such licences shall be so renewed from year to year, as long as such licences shall continue to be taken out by such person or persons as aforesaid, to whom the same respectively were before granted; and where any licence taken out by any such person or persons as before specified, under any act or acts of parliament in force as aforesaid, on or immediately before the said 5th day of *July*, 1825, shall expire between the 10th day of *October*, 1825, and the 5th day of *January*, 1826, it shall and may be lawful for the person or persons authorised to grant licences as aforesaid, to grant to the person or persons by whom such licence shall have been so taken out as aforesaid, a licence to exercise or carry on the same trade or business under the provisions of this act, for the remainder of the year ending the 10th day of *October*, 1826, upon payment of the whole duty imposed upon such licence at the time of granting thereof; and if any licence taken out by any such person or persons as before specified, under any act or acts of parliament in force as aforesaid, on or immediately before the 5th day of *July*, 1825, shall expire between the 5th day of *January*, 1826, and the

Licences taken out by any brewers, distillers, or publicans, as retailers of beer, spirits, or foreign wine, or sweets or made-wines, or mead or metheglin, under any former acts which shall expire between the periods herein mentioned, shall be renewed for a proportional part of the year, upon payment of duty accordingly, according to the quarter of the year in which taken out.

6 G. 4. c. 81.

5th day of *April*, 1826, it shall and may be lawful for the person or persons authorised to grant such licences as aforesaid, to grant to the person or persons by whom such licence shall have been so taken out as aforesaid, a licence to exercise or carry on the same trade or business, under the provisions of this act, for the remainder of the year ending the 10th day of *October*, 1826, upon payment of three-fourth parts of the duty imposed upon such licence at the time of granting thereof; and if any licence taken out by any such person or persons as before specified, under any act or acts of parliament in force as aforesaid, on or immediately before the 5th day of *July*, 1825, shall expire between the 5th day of *April*, 1826, and the 5th day of *July*, 1826, it shall and may be lawful for the person or persons authorised to grant licences as aforesaid, to grant to the person or persons by whom such licence shall have been so taken out as aforesaid, a licence to exercise or carry on the same trade or business under the provisions of this act, for the remainder of the year ending the 10th day of *October*, 1826, upon payment of one-half part of the duty imposed upon such licence at the time of granting thereof; and that all such licences which shall be so granted as aforesaid, between the 10th day of *October*, 1825, and the 5th day of *July*, 1826, shall expire respectively on the 10th day of *October*, 1826, and shall then be renewed, or a new licence for the same purpose granted for the whole year ensuing, to expire on the 10th day of *October* following; and such licences shall so in such manner be renewed from year to year, as long as such licences shall continue to be taken out by such person or persons as aforesaid, to whom the same were before granted respectively."

All other licences taken out by any persons other than brewers, or distillers, or publicans retailing

§ 20. "Where any licence taken out by any person or persons whatsoever in the U. K., other than a brewer of beer, or than a distiller or maker, distillers or makers of low wines or spirits, or than a person or persons authorised by justices of the peace to keep a common inn, alehouse, or victualling-house, who shall have taken out a licence for selling beer, cider, or perry, to be drank



person or persons, other than as aforesaid, under any act or acts in force as aforesaid, on or immediately before the said 5th day of *July*, 1825, shall expire between the said 10th day of *October*, 1825, and the 5th day of *January*, 1826, then upon payment of three fourth parts of the duty imposed upon such licence at the time of granting thereof; and if the licence taken out by any such person or persons, other than as aforesaid, under any act or acts in force as aforesaid, on or immediately before the said 5th day of *July*, 1825, shall expire between the said 5th day of *January*, 1826, and the 5th day of *April* then next following, then upon payment of one half of the duty imposed upon such licence at the time of granting thereof; and finally, if the licence taken out by any such person or persons, other than as aforesaid, under any act or acts in force as aforesaid, on or immediately before the said 5th day of *July*, 1825, shall expire between the said 5th day of *April*, 1826, and the said 5th day of *July*, 1826, then upon payment of one fourth part of the duty wholly imposed upon such licence at the time of granting thereof; and all such licences so granted as aforesaid between the said 5th day of *July*, 1825, and the 5th day of *July*, 1826, shall expire respectively on the 5th day of *July*, 1826, to be then renewed, or a new licence for the same purpose granted for the whole year ensuing, to expire on the 5th day of *July* following; and such licences shall in such manner be renewed from year to year, as long as such licences shall continue to be taken out by such person or persons, other than as aforesaid, to whom the same were before granted respectively." 6 G. 4. c. 81.

Licences may be transferred to the executors, wife, child, or assignee of the person licensed; but, in the case of retailing beer to be consumed upon the premises, not without certificate of a magistrate.

§ 21. Provided always, and it is further enacted, "that upon the death of any person or persons licensed under or by virtue of this act, or any law or laws of excise, or upon the removal of any such person or persons from the house or premises at which he, she, or they were authorised by such licence to exercise or carry on the trade or business mentioned in such licence, it shall and may be lawful for the person and persons authorised to grant licences, to authorise and empower, by indorsement on such licence, or otherwise, as the commissioners of excise shall direct, the executors or administrators, or the wife or child of such deceased person, or the assignee or assigns of such person or persons so removing as aforesaid, who shall be possessed of and occupy the house or premises before used for such purpose as aforesaid, in like manner to exercise or carry on the same trade or business mentioned in such licence, in or upon the same house or premises at which such person or persons as aforesaid deceased or removing as before mentioned, by virtue of such licence to him, her, or them in that behalf granted, before exercised or carried on such trade or business for and during the residue of the term for which such licence was originally granted, without taking out any fresh licence or payment of any additional duty, or any fee thereupon for the residue of such term and until expiration thereof: Provided always, that a fresh entry of the premises at which such trade or business shall continue to be so exercised or carried on as aforesaid, shall thereupon be made by and in the name or names of the person or persons to whom such authority as aforesaid shall be granted; and provided also, that no such authority as aforesaid shall be granted for the sale of beer, cider, or perry, or sweets, or made wines or sweets, mead or metheglin by retail, to be drank or con-

5 G. 4. c. 81.

sumed in or upon the house or premises for which the original licence was granted, except and in such cases where a proper certificate granted and given by a justice of the peace or magistrate, or other competent person according to the law, made after the death or removal of the former occupier or occupiers of the premises shall have taken place, shall be produced, approving of the person or persons to whom such certificate shall be given or granted as aforesaid."

Persons disabled by conviction from keeping a common inn, &c. shall not be allowed to retail beer under any excise licence, and clerk of the peace neglecting to deliver a copy of conviction shall forfeit 10*l*.

§ 22. "All and every person or persons who shall be disabled by any conviction from holding or having a licence to keep, or from keeping a common inn, alehouse, or victualling-house, shall also, by such conviction, be disabled from taking out and from having any excise licence to sell, and from selling beer, cider, or perry by retail in any manner whatsoever, under any excise licence or licences obtained for such purpose; and if any such person shall, after such conviction as aforesaid, take out or have any excise licence or licences for any such purpose as aforesaid, the same shall and is hereby declared to be absolutely null and void to all intents and purposes; and every person who shall, after such conviction as aforesaid, sell any beer, cider, or perry by retail in any manner whatsoever, shall incur the penalty for so doing without licence; and in all such cases, in the prosecution for the recovery of such penalty, a certificate from the clerk of the peace, or person acting as such, of any such conviction as aforesaid, shall, on the trial in such prosecution, be legal evidence thereof, which certificate such clerk of the peace or other person acting as such, is hereby authorised and required, within one week after any such conviction shall have been returned to his office, to deliver to the collector of excise, or other person or persons authorised to grant excise licences within the district or place in which such conviction shall have taken place, setting forth a copy of such conviction signed by himself, for which he shall demand or receive no fee or reward whatsoever; and if any such clerk of the peace, or other person acting as such as aforesaid, shall neglect or omit to deliver



ue in force; and that upon the expiration of such certificate
hority as aforesaid, the excise licence to sell beer, cider, or
by retail, to be drank or consumed upon the house or pre-
where sold, granted upon such certificate or authority as
aid, expires, and the excise licences to sell spirits, foreign
, sweets or made wines, and mead or metheglin by retail, to
ank or consumed upon the house or premises which are
d upon such retail beer excise licence do thereupon also
;" it is enacted, "that if the term for which any such certifi-
r authority as aforesaid is granted shall expire (no conviction
ore mentioned having taken place) at any time within the
uarter of the current year for which such excise licences as
aid respectively were granted, and no such certificate or
rity shall be renewed or granted for the succeeding year,
fourth parts of the duties thereupon respectively paid by the
n or persons to whom the same respectively were granted,
be returned to the person or persons then holding such
es, and carrying on trade or business in such house or pre-
; and if such certificate or authority as aforesaid shall expire
resaid, at any time within the second quarter of the current
for which such licences as aforesaid respectively were
d, and shall not be renewed or granted for the succeeding
one half part of the duties paid thereon respectively shall be
ed as aforesaid; and if such certificate or authority shall so
as aforesaid, at any time within the third quarter of the
t year for which such licences as aforesaid respectively were
d, and shall not be renewed or granted as aforesaid, then
rth part of the duties paid thereon respectively shall be
ed as aforesaid; and the collector or other person or per-
o whom the duty or duties payable on such licences respect-
was or were paid at the time of granting the same, shall and
reby respectively authorised and required to return such
r sums of money as aforesaid to such person or persons as

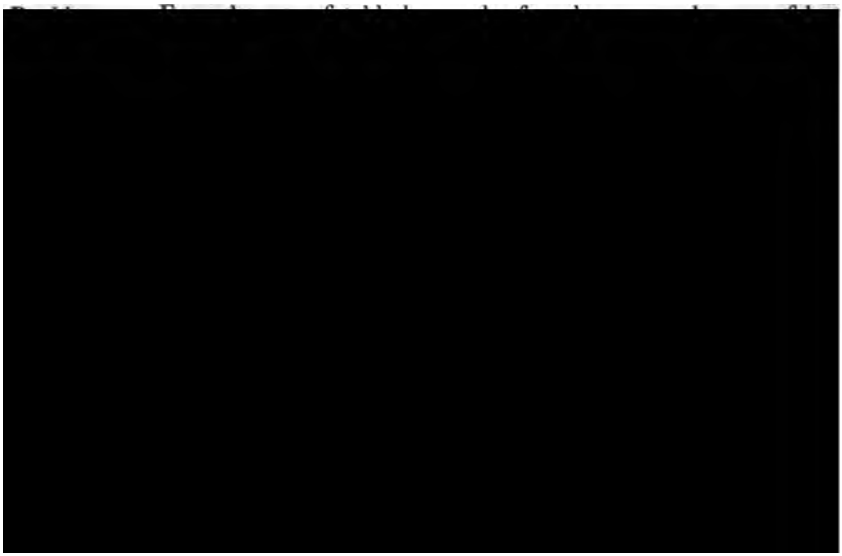
a proportional part of the duties on the excise licences shall be returned.

6 G. 4. c. 81.

carrying on jointly the same trade or business, the name or style of the firm or partnership,) and after such name or names, the word 'licensed,' adding thereto the words necessary to express the purpose, or trade or business for which such licence has been granted; and such person or persons shall cause such letters to be painted or placed, and fixed in some conspicuous place on the outside of the front of his, her, or their said premises, over the principal outward door or gate, or entrance-door thereto, and no more than three feet from the top of such outward door or gate or entrance-door; and if any such person or persons as aforesaid shall not paint or place and fix such letters as aforesaid, or shall not preserve and keep the same so painted, placed, and fixed, or shall not repaint or renew the same as often as necessity shall require, for the purpose of keeping the same in good order and condition during the continuance of his, her, or their licence, he she, or they shall forfeit for every such offence the sum of 20*l.* and if any person or persons, not being licensed to exercise or carry on any trade or business for which a licence is required by this act, shall put or have any such letters as aforesaid upon his her, or their premises, or any letters importing that he, she, or they does or do exercise or carry on any such trade or business or is or are licensed so to do, all and every such person or persons shall for every such offence forfeit the sum of 20*l.*"

Penalty for not taking out licences.

§ 26. "If any person or persons shall make or manufacture deal in, retail, or sell any goods or commodities hereinafter mentioned, or shall exercise or carry on any trade or business hereinaftermentioned, for the making or manufacturing, or dealing in, retailing, or selling of which goods or commodities, or for the exercising or carrying on of which trade or business a licence is required by this act, without taking out such licence as is in that behalf required, he, she, or they shall for every such offence respectively forfeit and lose the respective penalty thereupon imposed, as hereinafter follows; (that is to say)—*(inter alios)*—



or premises, or part of any house or premises, where such spirits or other liquors or goods shall be so sold as aforesaid, if but one occupier only, and if more than one, then the several occupiers thereof, being privy or consenting thereto, shall be deemed and taken to be the retailer or retailers of such spirits, or other liquors or goods, and as such shall be subject and liable to the penalties imposed upon persons for the sale of spirits, or such other liquors or goods, by retail, without licence."

the retailers thereof, if privy or consenting thereto.

§ 28. "If any person or persons licensed to exercise or carry on any trade or business, or make or sell any goods for which an excise licence is required, shall not produce and deliver such licence to be read and examined by any officer or officers of excise, within a reasonable time after such officer or officers shall demand the production thereof, such person or persons shall for each and every such offence forfeit the sum of 20*l.*"

Penalty on licensed persons not producing their licence on demand of officer, 20*l.*

§ 29. "For the encouragement of those who shall discover offences committed against the laws relating to excise laws;" it is enacted, "that where any person or persons shall be lawfully convicted of any offence in carrying on any trade or business, or making or selling any goods without licence, for the carrying on of which trade or business, or the making or selling of which goods a licence or licences is or are required by this act, and the pecuniary penalty imposed for such offence shall not be paid and cannot be levied, it shall and may be lawful for the commissioners of excise to cause such reward as they shall think fit, not exceeding 10*l.* in each case, to be paid to the several and respective persons who shall appear to them to be entitled thereto as informers, out of any monies in their hands arising by any penalties or forfeitures incurred under the laws of excise."

Informer against an unlicensed trader, to be paid such sum as the commissioners shall direct, not exceeding 10*l.* if the penalty cannot be recovered.

§ 30. Provided always, and it is further enacted, "that nothing in this act contained shall in anywise prejudice the privileges heretofore used and enjoyed by any university in the U. K. of *G. B.* and *Ireland*, or the respective chancellors or scholars of the same respectively, or their successors, or the master, wardens, freemen, and commonalty of the vintners of the city of *London*, or other city or town corporate, in any part of the U. K., or the mayor or burgesses of the borough of *Saint Albans*, in the county of *Hertford*, or their successors, but that they may respectively use and enjoy such privileges as they have heretofore respectively lawfully used and enjoyed the same."

Nothing in this act contained to prejudice the universities, the vintners' companies, or the borough of St. Albans.

§ 31. "All powers, authorities, rules, regulations, restrictions, exceptions, provisions, clauses, matters, and things, which in and by any act or acts of parliament relating to the revenue of excise in force in *G. B.* or *Ireland* respectively on or immediately before the said 5th day of *July*, 1825, are provided, settled, or established for securing, enforcing, managing, raising, levying, collecting, paying, mitigating, or recovering, adjudging, or ascertaining the excise duties or penalties thereby granted or imposed, and for preventing, detecting, and punishing frauds relating thereto, other than and except in such cases for which other penalties, regulations, or provisions are made or prescribed by this act, shall be exercised, practised, applied, used, and put in execution in and for the managing, raising, levying, collecting, mitigating, adjudging, ascertaining, recovering, and paying the several duties and penalties respectively hereby granted or imposed, and for the due

Former regulations to be put in force in execution of this act, except where repealed or altered by this act.

6 G. 4. c. 81.

enforcement of all other matters and things herein contained, s far as the same are not repugnant to or inconsistent therewith, a fully and effectually, to all intents and purposes, as if all and ever the said powers, authorities, rules, regulations, restrictions, excep tions, provisions, clauses, matters, and things were particularl repeated and again enacted in this present act."

Penalties and forfeitures to be recovered and applied as other excise penalties, unless otherwise by this act provided.

§ 32. "All penalties and forfeitures imposed by this act (sav and except in such case where any special provision is herei made) shall be sued for, levied, recovered, mitigated, and distri buted by such ways, means, and methods, and in such manner, a by any law or laws of excise in force is or shall in that behalf b directed, provided, and enacted in *G. B.* and *Ireland* respect ively."

Former regulations which are inconsistent with this act declared to be repealed.

§ 33. "All powers, authorities, rules, regulations, restrictions exceptions, provisions, clauses, matters, and things, provided fo or contained in any act or acts of parliament in force relating t the revenue of excise in *G. B.* or *Ireland* respectively, on o immediately before the 5th day of *July*, 1825, expressly repealed, altered, or re-enacted by this act, or which are repugnant to, o inconsistent with the several matters, clauses, provisions, and re gulations of this act, any or either of them, shall, and the same are hereby respectively, from and after the said 5th day of *July*, 1825, declared to be repealed, and shall no longer be put in force or observed in any part of the U. K."

Irish licences of 1825 to be charged and paid according to the rates imposed by this act.

§ 34. Provided always, and it is further enacted, "that for and upon the several excise licences taken out by any person or per sons in *Ireland*, in and for the year 1825, under the laws of excise then in force, there shall be raised, levied, collected, and paid, so much only of the duties payable thereon as shall be equal and correspondent to the several sums of money made payable by this act upon such licences, from and after the 5th day of *July*, 1825, so far as the same can be computed, adjusted, and ascertained; and that it shall and may be lawful for the commissioners and several collectors of excise, and they are hereby authorised and



be drank or consumed elsewhere, subject nevertheless to the several provisions and penalties in this act contained, relating to brewers retailing beer from the premises where brewed: Provided always, that no retail brewer, not being duly licensed to sell beer as a keeper of a common inn, alehouse, or victualling-house, shall deal in or sell any table-beer, or any beer except the strong beer which he or they shall brew, and be charged with the duty thereon, or shall at any one time use, employ, or consume any less quantity than 16 bushels of malt at any one brewing, upon pain of forfeiting for each and every such offence the sum of 100*l.*" 5 G. 4. c. 54.

Penalty on brewers not licensed as victuallers selling table-beer; or using less than 16 bushels of malt at a brewing, 100*l.*

By stat. 9 *G.* 4. *c.* 68. § 1. Reciting that, by 5 *G.* 4. *c.* 54. § 11. it was enacted, "that no licensed brewer of beer for sale, who should also be duly licensed to retail such beer under that act, should sell, deliver, or send out at or from his, her, or their brewery, or the premises belonging thereto, or entered as aforesaid in the said act, or to any of his, her, or their customers, any beer in any quantity less than a whole barrel, except between the hours of six of the clock in the morning and nine of the clock in the evening, or shall sell, deliver, or send out any beer during the usual hours of divine service on *Sundays*, upon pain of forfeiting for each and every such offence the sum of 20*l.*;" and that "it is expedient that the time during which such brewers shall be allowed to sell beer should be extended;" it is enacted, "that from and after the passing of this act it shall be lawful for any such brewer, as in the said act is in that behalf mentioned, to sell beer by retail as aforesaid, at or from his, her, or their brewery, or other premises entered by such brewer for that purpose as in the said act is provided, between the hours of four of the clock in the morning and ten of the clock in the evening, subject nevertheless in all other respects to the several rules, regulations, and restrictions by and in the said act enacted and contained." 9 G. 4. c. 68.

Brewers licensed under the recited act may sell beer between the hours of four in the morning, and ten in the evening.

By stat. 42 *G.* 3. *c.* 38. § 18. No person, not being a common brewer, shall retail beer at any higher price than 1½*d.* the quart, without entering into a recognizance and obtaining a licence as a common alehouse keeper, under pain of forfeiting for each offence 50*l.* over and above any penalty imposed upon selling beer or ale without a licence. 42 G. 3. c. 38.

Retailing beer at more than 1½*d p. quart*, without licence, penalty 50*l.*

By stat. 3 *G.* 4. *c.* 18. § 11. All beer and ale above the price of 16*s.* the barrel (exclusive of the duties) shall be deemed to be strong beer or ale; and all beer of the price of 16*s.* the barrel or under (exclusive of the duties) shall be deemed to be table beer within the meaning of the several acts in force relating to beer or ale. 3 G. 4. c. 18.

When beer shall be accounted strong, and when table.

By stat. 15 *C.* 2. *c.* 11. § 1. No common brewer, innkeeper, victualler, or other retailer of beer or ale shall, without first giving notice at the next office of excise, or to the commissioners or subcommissioners, or one of them, erect, alter, or enlarge any tun, fat, back, cooler, or copper, and make use thereof for brewing or making any beer, ale, or worts, on pain of 50*l.* And every other person, in whose occupation any house, outhouse, or other place shall be, where any such private tun, &c. shall be found, shall also forfeit 50*l.* And the same, together with all beer, ale, or worts therein, shall be taken up, seized, and forfeited, to be sold to the use of the poor. 15 C. 2. c. 11.

Notice of erecting and altering tuns, &c. for brewing beer or ale.

5 G.3. c.43. No tun, batch, &c.to be altered without notice.

By stat. 5 *G.* 3. *c.* 43. § 25. If any common brewer shall the position of any tun, batch, float, cooler, or copper after same hath been set up and fixed, without first giving notice the in writing to the officer; or shall place any boards, stone, w or any other materials at, in, or upon the dipping-place ther or shall, by any other means, prevent or hinder the officer taking true dips and gauges of such beer, ale, or worts, he forfeit 20*l.*

7 & 8 W. c.30. Officer may enter and examine suspected places.

And by stat. 7 & 8 *W.* 3. *c.* 30. § 27. The officer of excise in daytime, and in the presence of a constable, where he shall just suspicion that any private back, tun, or other concealed v or receptacle is used by any brewer, distiller, or maker of ciseable liquors, on request first made and cause declared, break open the door, or any part of such brewhouse, wareh or other room in his possession, and enter and break up the gr in such house or room, or ground near adjoining, in his posses to search for such back, tun, or other vessel, or any pipe or veyance leading thereto; and if he find any private pipe or conveyance, he may search after and follow the same, and shall lead into any ground, house, or place in the possessi any other person, on like request and with a constable, he enter the same, and break open the ground or any part of house, if occasion shall be, to follow such private pipe, in ord find out such concealed back, tun, or other vessel, making the ground or house so broken up, or giving reasonable sati tion to the owner; and if any person shall oppose such office shall forfeit 20*l.*

8 & 9 W. c.19. 42 G.3.c.38. Private pipes or conveyances.

By stat. 8 & 9 *W.* 3. *c.* 19. § 4. and 42 *G.* 3. *c.* 38. § 15. No com brewer shall keep any pipe or other private conveyance from copper in his brewhouse, except the regular discharge-pipes ing directly to his mashtun, hopback, or coolers; nor shall any fixed or other pipe or conveyance leading from any u back, hopback, back, or cooler, except such as without private or concealed stopcock therein or thereon, shall h



or coolers, and out of the same into his tuns, batches, or floats; or out of the tun into his cask.

And by stat. 15 *C.*2. *c.* 11. § 1. and 1 *W.* 3. *st.* 1. *c.* 24. § 11. No common brewer, innkeeper, victualler, or other retailer of beer or ale, shall use or keep any private storehouse, cellar, or other place for laying off any beer or ale or worts in cask, on pain of 50*l.*; and every other person, in whose occupation any such place shall be, shall also forfeit 50*l.* 15 C.2. c.11. 1 W. st.1. c.24. Private cellar.

By stat. 49 *G.* 3. *c.* 81. § 8. Where any vessels would, if found, be liable to forfeiture for want of entry, or being private or concealed, all the utensils employed, or fit to be employed in the manufacture of any exciseable commodity, in any private or concealed room or place where any such vessel shall be found, shall be forfeited, or may be seized by any officer of excise. 49 G.3. c.81. Utensils forfeited.

By stat. 22 & 23 *C.* 2. *c.* 5. § 10. If any person inhabiting in a market-town, city, or town corporate, or parts adjoining to a city or town corporate, where there is a common brewhouse, having and lawfully using any private brewing vessels for making beer or ale to be consumed in his own private family, shall permit any beer, ale, or worts to be brewed in his house, outhouse, or other place thereunto adjoining, other than for his own family, servants, labourers, or for others, by way of charity, hospitality, or free gift; or shall lend out any of his brewing vessels, other than those which are moveable and unfixed, he shall forfeit 50*l.* 22 & 23 C.2. c.5. Private person suffering liquors to be brewed in his house.

By stat. 5 *G.* 4. *c.* 54. § 18. Reciting that by stat. 22 & 23 *Car.* 2. *c.* 5. it was, amongst other things, enacted, that if any person or persons inhabiting in any market-town, or in any city or town corporate, or parts adjoining to any city or town corporate, where there is or shall be a common brewhouse, having and lawfully using any private brewing vessels for the brewing and making of beer or ale to be spent and consumed in his or their private families, shall lend out any of their brewing vessels to be made use of by any other person or persons, not being of his or their family, for the brewing of beer or ale for the use of any other person or persons, then such person or persons shall forfeit for every such offence the sum of 50*l.*: and that it is expedient to repeal so much of the said act as is herein-before recited; it is enacted, that from the passing of this act, *viz.* 4th *June*, 1824, the same shall be and is repealed. 5 G.4. c.54. Repeal of 22 and 23 C.2. c.5. § 10. prohibiting the loan of brewing utensils.

By stat. 12 *C.* 2. *c.* 24. § 33. The gauger shall at all times in the day (and in the night with a constable) be permitted, upon his request, to enter the brewhouse and all other houses and places belonging to or used by any person brewing of beer, or by any retailer of beer, ale, wort, perry, cider, or metheglin; and to gauge all coppers, vats, and vessels in the same; and to take an account of all such liquors brewed or made therein; and thereof shall make return in writing to the commissioners, leaving a true copy of such return under his hand with such brewer, maker, or retailer; which return shall be a charge upon such brewers, makers, or retailers. 12 C.2. c.24. Gauger to enter and take account.

§ 33. And if any such common brewer, maker, or retailer shall refuse to permit such gauger to enter his brewhouse or other place aforesaid, or to gauge or take account of his vessels or liquor aforesaid, he shall be forthwith forbidden by the gauger to sell, carry out, or deliver to any of his customers any beer, ale, or If there be refusal to permit the gauger, he may forbid sale of the liquor.

other the liquors aforesaid; and if he shall, after such w given, sell, carry, or deliver out the same, or any part there having paid the duty of excise, he shall, besides the forfeit double value, forfeit also the sum of 10*l*.

7 & 8 W. c. 30. Penalty on the brewer for refusal.

By stat. 7 & 8 *W.* 3. *c.* 30. § 22. If any common brewe keeper, or victualler shall, on request or demand made gauger in the daytime, or in the night in presence of a con refuse to permit him to come into his house, brewhouse, or place used by him; or, being entered, shall refuse him to s the brewhouse whilst his guile is brewing, and quietly gaug take an account of the several worts as they are brewed o let into his backs and tuns, and to see their strong and smal table-beer by 42 *G.* 3. *c.* 33. § 7.] drink cleansed and carrie without mixture, and to take an account of the goods in the tun, or the quantity of malt from which such worts are ma shall forfeit 20*l*., and the prosecutor shall not be obliged to that the party carried out any part of such guile before h the duties.

15 C. 2. c. 11. Offering or taking bribes.

By stat. 15 *C.* 2. *c.* 11. § 16. If any brewer shall bribe the g to make a false return, or to omit the executing of his employ he shall forfeit 10*l*.; and the officer taking the bribe shal forfeit 10*l*. upon conviction, on the oaths of two witnesses two justices of the peace, or the chief magistrate of the pla be levied by distress; and, for want of distress, the offender committed to the common gaol for three months.

Indifferent gaugers may be sworn.

§ 7. As often as there shall be occasion, two able artist be appointed, one of them by the commissioners or subco sioners, and the other by the brewers of any city or place shall be sworn before a justice to take and compute the jus tents and gauge of all coppers, fats, tuns, backs, and cooler all other brewing vessels of that nature, and to deliver under hands one copy of the contents to the commissioners, and a to each respective brewer.

[redacted]

or ale so added to such guile was added in the sight and view of the gauger. 8 & 9 W. 3. c. 19.

§ 3. Whereas many brewers, having strong beer or ale remaining in the brewhouse from the time it was brewed until the next guile or brewing, the quality of which they frequently alter by mixing with the same new small beer or old returned drink, and then add the beer and ale so altered to the next guile; if it shall appear to the gauger that the quality of such strong beer or ale so remaining in the brewhouse of a former guile, and added to a guile of new drink, hath been so altered since it was brewed, he shall return all such beer and ale so altered and added to a guile of new drink, as if the same were then originally brewed, and had never been charged before; and the duties shall be paid accordingly. See *post*, p. 142. Mixing drink of a former brewing.

By stat. 1 & 2 G. 4. c. 22. § 1. Every brewer of beer for sale shall enter, or cause to be entered, in a book or paper, to be delivered to him by the officer of excise, and at all times kept by such brewer in some public and open part of his entered premises ready for the inspection of the officers of excise, the quantity of malt which he or she shall intend to use in his or her next brewing, together with the day when such brewing is intended to be made, and such entry shall be so made before any part of such malt shall be mashed, or any water or other liquor put thereto, or mixed therewith; and every such brewer shall, at the time of making such entry, write or cause to be written, in such book or paper, opposite such entry, the date when such entry was so made; and if any such brewer shall refuse or neglect to make such entry as aforesaid, or shall cancel, obliterate, or alter, or cause, or suffer, or permit to be cancelled, obliterated, or altered, any such entry, or shall make any untrue entry therein, or shall not at all times keep such book or paper in some public and open part of his entered premises, ready for the inspection of the officers of excise, or shall mash, or put to, or mix any malt with water or other liquor before such entry shall be made, he or she shall, for every such offence, forfeit the sum of 200*l*. 1 & 2 G. 4. c. 22. Brewers to enter in a book delivered by the officer the quantity of malt intended to be used in the next brewing, &c.

§ 2. No such brewer shall remove or cause to be removed his or her malt which has been mashed, or any part thereof, from the tun or vessel in which the same has been mashed, until the proper officer shall have gauged and taken an account of the quantity of such malt, or use, cause, permit, or suffer to be used any means whatever to prevent or hinder such officer or officers of excise from taking an accurate gauge and account thereof, and if any person or persons shall remove, or cause, suffer, or permit to be removed any part of such malt, before such officer shall have gauged and taken an account of the same, or shall use any means as aforesaid, or obstruct, hinder, molest, or prevent any such officer or officers in or from so doing, or in execution of any of the powers and authorities given or granted to him or them by this act, every such person or persons shall severally forfeit for every such offence the sum of 200*l*. Provided, that no such brewer or other person shall incur the penalty aforesaid, for removing any such malt after all the worts have been drawn off from such malt, without any officer having gauged and taken an account thereof, if such brewer shall at the time of making such entry, have specified in such book or paper and entry as aforesaid the time for Mashed malt not to be removed till gauged and taken an account of by the officer. Penalty 200*l*. Not incurred for removing malt after worts drawn off if officer neglect to attend

1&2G.4. c.22.

such officer to attend to take such gauge and account, and such officer or officers shall not attend for that purpose within an hour after the time so specified.

within an hour after the specified time.

§ 3. It shall be lawful for any officer of excise to take a sample or samples, not exceeding one pint at each time, of any wort or worts at or on the entered premises of any such brewer, at any time after the same shall have been drawn from the mash-tun, as often as may be necessary for the purpose of ascertaining the specific gravity thereof; returning such sample to such brewer after the specific gravity thereof has been ascertained, or paying him or her for the same at and after the rate of the current price of beer made from such wort; and no such brewer shall ferment or mix, or cause, permit, or suffer to be fermented or mixed, any wort with any yeast or other matter or thing for or occasioning fermentation, until the proper officer has taken such sample; and if any such brewer shall ferment or mix, or cause, permit, or suffer to be fermented or mixed, any of his or her wort with any yeast or other matter or thing for or occasioning fermentation, until such officer has taken such sample, he or she shall forfeit for every such offence the sum of 200*l.*: Provided that no such brewer shall incur the penalty last aforesaid, for fermenting or mixing any of his or her wort with yeast, or any other matter or thing occasioning fermentation, after the expiration of one hour after such wort has been run or drawn off from the copper in which the same has been boiled with hops, without any sample being thereof taken as aforesaid, if such brewer shall at the time of making such entry have specified in such book and paper and entry the time for such officer to attend to take and draw such sample, and such officer shall not attend for that purpose within an hour after the time so specified.

Samples of wort may be taken after it is drawn from the mash-tun.

Worts not to be fermented till such samples are taken, on penalty of 200*l.*

Not to be incurred if officer neglect to attend within an hour after the specified time.

§ 4. There shall be delivered by the proper officer of excise to every such brewer, and to every dealer in beer or ale, a book or books to be prepared with proper printed forms and titles for the purpose hereinafter mentioned, and kept by every such brewer and

Books to be delivered to brewers containing forms of

If any officer of excise shall discover and find any increase stock of any brewer, victualler, dealer, or retailer, over and the quantity of beer or ale which the officer found in such ', victualler, dealer, or retailer's custody, at the time of the eceding survey upon such brewer, victualler, dealer, or re- and which increase such brewer, victualler, dealer, or retailer, ot thereupon satisfactorily account for, as arising from luly received with such certificate as aforesaid, or brewed self, and on which the duty has been duly charged; such e, or a quantity of beer or ale equal thereto, shall be d and taken to be beer or ale brewed without payment of and shall be forfeited; and a quantity equal to the in- d quantity shall be seized and taken by the officer of who shall discover the same, from and out of such stock; e person in whose stock such increase shall be discovered und, shall for each and every such offence forfeit the sum l.

Increase in the stock beyond the preceding survey, not satisfactorily accounted for, shall be forfeited, and the brewer shall forfeit 200*l*.

tat. 7 & 8 *W.* 3. *c.* 30. § 21. If any common brewer, innkeeper, ualler, shall cleanse or remove out of his brewhouse any f his guile or brewing of beer, ale, or worts, before the of such guile is brewed off, and until the gauger shall or have taken an account of the same, without first giving to the supervisor or gauger, at what time, what quantity, what place he intends to remove, he shall, for every barrel, 40*s*.

7 & 8 W. 3. c. 30. Removing drink before the whole is brewed off.

tat. 1 *W.* 3. *sess.* 1. *c.* 24. § 6. Where it shall appear to the r that any worts are missing or not fairly let down into the nd the gauger cannot find the same, he may charge for so beer or ale as such worts so missing would reasonably make. Gaugers may take their gauges, and make their returns and

1 W. sess. 1. c. 24. Gauger may charge for worts missing.

Gauge may be

Mixing small beer with strong.

vert any small beer or small worts so taken account of into strong beer or ale, by mingling, letting down, or striking over the same, and shall sell, deliver out, or retail the same, without giving notice to the same gauger of the quantity so mingled and converted, or if any such brewer or retailer shall, after the said time, conceal or convey any beer, ale, or worts not gauged from the sight of the gauger, whereby the king may be defrauded of the duty, he shall forfeit 20*s.* a barrel.

2 G.3. c.14.

By stat. 2 *G.* 3. *c.* 14. § 2. If any common or other brewer, innkeeper, victualler, or retailer of beer or ale, shall mix, or cause or suffer to be mixed in any vessel, tub, measure, or otherwise however, any strong beer, ale, or strong worts, with any small beer or small worts, or with water, after the gauge shall have been taken, he shall forfeit 50*l.*

42 G.3. c.38. Penalty on persons mixing liquor to imitate, or to be mixed with or used as beer made from malt and hops, or selling such liquor, 200*l.* and forfeiture of liquor and utensils.

By stat. 42 *G.* 3. *c.* 38. § 20. Which recites, that whereas many persons, under pretence of recovering stale beer, or making or preparing beer finings, or colouring for beer, or under other pretences, have fabricated from divers ingredients, injurious to the health of H. M.'s subjects, liquor to resemble beer or ale brewed entirely from malt and hops, or to be mixed with beer or ale so brewed, to the great injury of H.M.'s subjects, of the fair trader, and of H. M.'s revenue, it is enacted, that from the 1st of *May*, 1802, no person shall mix, fabricate, or prepare, or suffer to be mixed, &c. from beer-grounds, stale beer, sugar-water, distiller's spent-wash, sugar-melasses, vitriol, quassia, cocculus indiæ, grains of paradise, guinea pepper, opium, or any other material whatever (except malt and hops), any liquor to imitate, resemble, or to be mixed with or used as beer or ale brewed from malt and hops; nor shall sell or dispose of, or cause to be sold, &c. to any brewer of, dealer in, seller, or retailer of beer or ale, or to any other person whatever, any liquor so mixed or prepared, on pain of 200*l.* for every offence; and all liquor so mixed or prepared, and also all beer-grounds, stale beer, &c. &c. other than malt and hops, in the custody or possession of such person, together with every



ewer of beer or ale, shall be liable to the said penalty for having taking into his custody or possession any liquor compounded or epared from stale beer-grounds, stale beer, or any of the ingre- ents aforesaid, or in the fabrication or preparation whereof any aterials or ingredients as aforesaid, other than malt and hops, ve been mixed or made use of, if at the trial or hearing for re- very of the said penalty such dealer or seller shall prove to the tisfaction of the court and jury, or of the commissioners of cise, or justices before whom such hearing shall be had, that ch liquor was bought and received by such dealer or seller in e fair and usual course of trade, of some regular brewer of beer r ale, and that such dealer or seller had no knowledge of such quor being compounded or prepared contrary to this act. 42 G.3. c.38. if he can exculpate himself.

§ 23. Every excise officer may, whenever it seems to him expe- lient, take samples of any liquor which he shall suspect to be iquor so mixed or prepared as aforesaid, to resemble or be mixed ith or used as beer or ale brewed from malt and hops, such sam- le not exceeding three gallons at any one time, on paying after he rate of 1*s.* 6*d.* by the gallon. Excise officers may take samples of suspected liquors; and

§ 24. If any officer of excise shall have cause to suspect that ny person does in any place mix or prepare from any such ingre- dients as aforesaid any liquor to resemble, be mixed with, or used s beer or ale brewed from malt and hops, or to be disposed of to ny brewer of or dealer in beer or ale, or to any other person, or hat such liquor so mixed or prepared has been disposed of to any brewer or dealer in, seller or retailer of beer or ale, or to any other person, and that the same is deposited in any place what- soever, then if such place be within the limits of the chief office of excise in *London*, upon oath by such officer before any two of the commissioners, &c., or if such place be in any other part of *G. B.*, upon oath before a justice for the county, &c. or place, where such suspected place shall be situate, setting forth the ground of his suspicion, it shall be lawful for the said two com- missioners, or the justice respectively, as the case may require, if they or he shall judge it reasonable, by special warrant under hand and seal, to empower such officer by day or night, but if in he night, then in the presence of a constable or other lawful fficer of the peace, to enter into every such place where he shall s suspect any person to mix or prepare from beer-grounds, stale eer, and the ingredients aforesaid, any liquor to resemble or be sed as beer or ale, brewed from malt and hops, or to be mixed ith beer or ale, or sold or disposed of to any brewer, dealer, eller, or retailer, as aforesaid, or to any other person, or where uch officer shall suspect any such liquor so mixed or prepared, r sold or disposed of to any brewer, &c. or any other person, is odged or deposited, and to seize as forfeited all such liquor there found, and every other material or ingredient whatsoever as afore- aid (other than malt and hops), and every copper, cooler, back, tun, vat, and other vessel and utensil which he shall there find, in which any such liquor or ingredient shall be contained, or which shall have been made use of in the mixing, preparing, or keeping any such liquor; and the person, in whose custody or possession the same respectively shall be found, shall forfeit 100*l.* may search suspected places; and may seize the liquor, ingredients, and utensils. Penalty of 100*l.*

§ 25. And if any question thereof arise, the proof of such liquor not being liquor mixed or prepared from other ingredients than malt and hops, shall lie on the owner or claimer thereof. Proof to lie on the owner.

56 G.3. c.58. No material or preparation of the description herein mentioned shall be in the possession of any brewer or dealer, or used in colouring of beer.

By stat. 56 G. 3. c. 58. (by which stat. 51 G. 3. c. 87. is repealed) § 2. "No brewer or brewers of, or dealer or dealers in, or retailer or retailers of beer, shall receive or take into, or have in his, her, or their custody or possession; or make, or use, or mix with, or put into any worts or beer, any liquor, extract, calx, or other material or preparation for the purpose of darkening the colour of worts or beer, or any liquor, extract, calx, or other material or preparation, such as has been heretofore, or as shall hereafter be made use of for or in the darkening of the colour of worts or beer, other than brown malt, ground or unground, as commonly used in brewing; or shall receive or take into, or have in his, her, or their custody or possession, or use or mix with, or put into any worts or beer, any melasses, honey, liquorice, vitriol, quassia, cocculus indiæ, grains of paradise, guinea pepper, or opium, or any extract or preparation of melasses, honey, liquorice, vitriol, quassia, cocculus indiæ, grains of paradise, guinea pepper, or opium, or any article or preparation whatsoever, for or as a substitute for malt or hops; and if any such brewer or brewers of, or dealer or dealers in, or retailer or retailers of beer, shall receive or take into, or have in his, her, or their custody or possession, or make or use in brewing, or mix with or put into any worts or beer, any liquor, extract, calx, or other material or preparation for the purpose of darkening the colour of worts or beer, or any liquor, extract, calx, or other material or preparation such as has been heretofore or as shall hereafter be made use of for or in the darkening of the colour of worts or beer, other than brown malt, ground or unground, as commonly used in brewing, or shall receive or take into, or have in his, her, or their custody or possession, or shall use or mix with, or put into any worts or beer, any melasses, honey, liquorice, vitriol, quassia, cocculus indiæ, grains of paradise, guinea pepper, or any extract or preparation of melasses, honey, liquorice, vitriol, quassia, cocculus indiæ, grains of paradise, guinea pepper, or opium respectively, or any article or preparation whatsoever, for or as a substitute for malt

chemist or chemists, or any other person or persons what-
shall sell, send, or deliver, or cause, or procure, permit, or
to be sold, sent, or delivered to any licensed brewer or
s of, or dealer or dealers in, or retailer or retailers of beer,
g him, her, or them to be so licensed, or to be reputed to
licensed, or shall sell, send, or deliver, or cause or procure
old, sent, or delivered to any other person or persons for or
ount of, or in trust for, or for the use of any such brewer
wers, or dealer or dealers, or retailer or retailers of beer,
uor called or known by the name or description of, or sold
uring, from whatever materials the same may have been
or any other material or preparation, other than unground
malt, for the purpose of darkening the colour of worts or
r any liquor or preparation such as has been heretofore
r as shall hereafter be made use of for or in the darkening
our of worts or beer, except as aforesaid, or any melasses,
liquorice, vitriol, quassia, cocculus indiæ, grains of paradise,
pepper, or any extract or preparation of melasses, honey,
ce, vitriol, quassia, cocculus indiæ, grains of paradise, guinea
, opium, or any article or preparation to be used in worts
r for or as a substitute for malt or hops respectively; all Penalty.
quor called or known by the name or description of or sold
uring, and material or preparation for the purpose afore-
id liquor and preparation used, or which shall hereafter be
r or in the darkening the colour of worts or beer, melasses,
liquorice, vitriol, quassia, cocculus indiæ, grains of paradise,
pepper, extract or preparation of melasses, honey, liquorice,
quassia, cocculus indiæ, grains of paradise, guinea pepper,
and article or preparation to be used for or as a substitute
lt or hops, respectively, shall be forfeited, and the same

22 & 23 C. 2. c. 5. Mixing by the retailer.

By stat. 22 & 23 *C.* 2. *c.* 5. § 11. No retailer of beer or ale shall, after the receipt thereof from the common brewer, mix any beer, ale, or worts of extraordinary strength with any small beer, ale, or worts, in any vessel or tub containing three gallons or more, on pain to forfeit for every barrel so mixed double the duty of excise for strong beer or ale, and so proportionably for any greater quantity.

43 G. 3. c. 69. Measure of the barrel of beer or ale.

And by stat. 43 *G.* 3. *c.* 69. § 12., reciting that it is expedient that the quantities to be returned as and for a barrel of beer or ale brewed by the common brewer, and the allowances for waste, should be in all places the same; it is enacted, that after the 5th day of *July*, 1803, every 36 gallons of beer or ale brewed by the common brewers in *G. B.*, whether within the weekly bills of mortality, or without the same, taken according to the standard of the ale quart, four thereof to the gallon, in the exchequer, shall be reckoned and returned by the gauger or other officer of excise for a barrel of beer or ale.

5 G. 4. c. 54.

Stat. 5 *G.* 4. *c.* 54. § 17. Whereas it is expedient that the duties on beer should be charged throughout *G. B.* by the same measure, every 36 gallons of beer taken either by gauge or measure shall, throughout *G. B.*, be reckoned and returned by the officers of excise for a barrel of beer, and the several rates of duty imposed in respect of beer shall be charged thereon accordingly, and so in proportion for any less quantity, and no beer shall be sold by any brewer, dealer, or retailer, at any other rate or quantity *per* barrel than the above quantity of 36 gallons, any law or usage to the contrary notwithstanding.

6 G. 4. c. 58. When gallon mentioned in any act, it shall be taken to mean a gallon imperial standard gallon mea-

And by stat. 6 *G.* 4. *c.* 58. § 6. It is enacted, that after 5th *Jan.* 1826, in every act of parliament relating to the revenue of excise, whenever and for whatever purpose any gallon measure is mentioned, it shall be deemed and taken to be a gallon imperial standard gallon measure; and that all duties, &c. under any law or laws of excise shall thenceforth be made and kept according to such imperial standard gallon measure only, or some multiple part

one penny halfpenny the quart, alehouse measure, without ng a licence as a common alehouse-keeper, he shall forfeit er and above any other penalty for selling beer or ale with- h licence.

price than 1½d. per quart, without licence, on penalty of 50l.

tat. 7 & 8 *W.* 3. *c.* 30. § 46. Notes of every gauge, signed gaugers, containing the inches and tenths of the backs, nts of the tuns, and quality of the liquors, shall be left n with the common brewers of ale or beer, or some (if demanded) at the time of taking the gauges, on pain

7 & 8 W. c. 30. Notes of the gauge, and charges to be left.

by § 25. The gauger shall, within three days after the end y week, deliver to or leave with the brewer or retailer, or ervants, a true copy under his hand of each respective by him made, containing the quantity and quality of the by him charged in such week; and if he shall neglect or after demand in writing, 12 *G.* *c.* 28. § 30.) to leave such r shall charge such person more than such copy contains, l forfeit 10*l.*

tat. 42 *G.* 3. *c.* 38. § 14. Upon complaint made before the sioners of excise or justices of the peace on the behalf of nmon brewer on account of any overcharge made on him officer of excise, in respect of any table beer charged and d by such officer as strong beer, it shall not be lawful for mmissioners or justices to discharge such brewer of such or any part thereof, unless proof be made before them on r a credible witness to their satisfaction that the whole y of the table-beer made in the guile or brewing to which mplaint refers, or at least the greater part thereof, was r sold at a price not exceeding 16*s.* the barrel, exclusive

42 G. 3. c. 38. Overcharge of excise officer, how dischargeable.

12 C.2. c.24. alehouse-keeper, victualler, or other retailer who does not once a month make due entries, shall forfeit 20*s*.

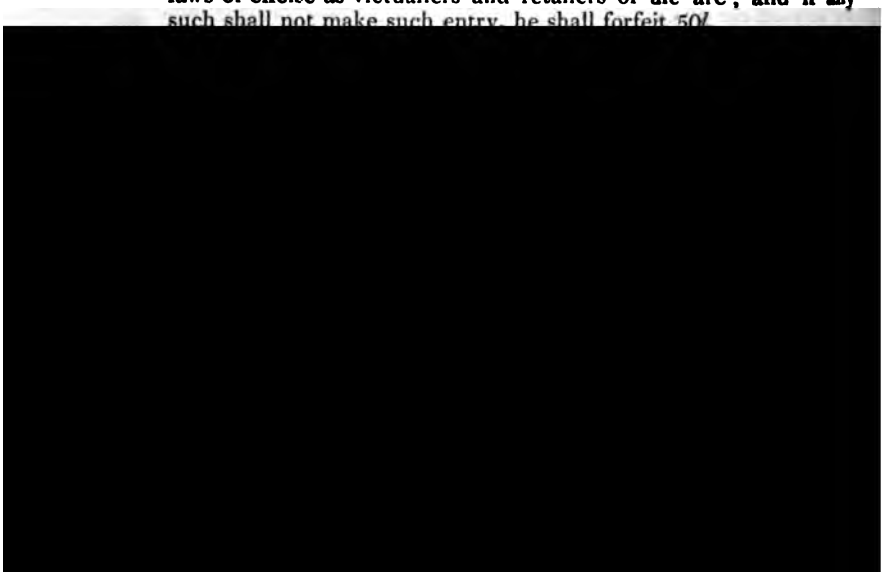
§ 31. Every common brewer who shall not pay within a week after he made his entry, or ought to have made his entry, shall pay double value of the duty; and every innkeeper, alehouse-keeper, victualler, or other retailer who shall not pay within a month after he made his entry, or ought to have made his entry, shall pay double value of the duty. (M.)

§ 32. Provided that no such person shall be compelled to travel for making the said entries, or payment of the said duties, or other cause whatsoever touching the same, if he live in a market-town, out of the said town; if he live out of a market-town, then to no other place than to the next market-town to his habitation in the same county, on the market-day.

15 C.2. c.11. But by stat. 15 *C.* 2. *c.* 11. § 6. No common brewer shall be prosecuted for any forfeiture for any mis-entry or short entry, if he shall in one week after the delivery of the copy of the return made by the gauger, rectify his entry according to the said return, or otherwise discharge himself.

1 W. & M. sess. 1. c.24. But by stat. 1 *W. & M. sess.* 1. *c.* 24. § 10. No brewer shall have any benefit of this proviso, on any information to be brought against him for non-entry, false entry, or non-payment, if it shall appear by the evidence that he did not *bonâ fide* show to the gauger all the beer, ale, and worts of each respective guile for such time for which such copy of the return was made; or if any apparent fraud was acted, to defraud the king of his duty, for any part of the drink brewed in the time for which such copy of the return is made or given by the gauger.

42 G.3. c.38. By stat. 42 *G.* 3. *c.* 38. § 17. Every dealer in and seller of table-beer, selling, delivering, or disposing of more than one gallon at one time, shall make entry at the excise of all places for storing, laying, keeping, or selling such beer, and shall be subject to the laws of excise as victuallers and retailers of ale are; and if any such shall not make such entry, he shall forfeit 50*l*.



a butt or pipe of three barrels, on forfeiture, for each , of 100*l.*: Provided, that nothing herein shall prevent any n brewer, upon twenty-four hours' notice thereof in writing proper officer of excise, from putting into any vessel of a size or content a sufficient quantity of table-beer, not ex- ; two barrels for every 100 barrels of the full content of such vessel, to preserve such vessel in a proper condition for ıg or storing strong beer; and provided also that no strong all be put into any such large vessel until all such table-beer ıve been taken out of the same, in presence of and to the tion of the proper officer of excise. 42 G. 3. c. 38. vessel of more than three barrels, on penalty of 100*l.* except to keep the vessel in a state to receive strong beer.

by stat. 12 *C.* 2. *c.* 24. § 39. If any person shall brew and retail any small quantities of beer or ale in any fair, who is berwise a common brewer or retailer thereof, and shall, such selling and retailing, pay the excise for the same; he : freed from all penalties relating to such entries and the 12 C. 2. c. 24. Exception of selling in fairs.

tat. 42 *G.* 3. *c.* 38. § 19. No entered dealer in beer, being orter of beer or ale, shall have or keep any table-beer in lar, or other place entered for laying or keeping strong and if any such dealer shall have or keep any table-beer in ch cellar or other place, the person so offending shall for ffence forfeit 50*l.* 42 G. 3. c. 38. No exporter to keep table-beer in any entered place for strong beer. Penalty.

The commissioners and sub-commissioners may compound nkeepers and others for the duties. Compounding.

by stat. 15 *C.* 2. *c.* 11. § 14. No person who hath com- d shall, during the term of such composition, suffer any ale to be brewed within his brewhouse for any other com- ewer, without first giving notice to the commissioners or nmissioners, and forthwith paying down the excise thereof; ein that as well the brewer who shall brew the same, as wer for whom it shall be brewed, shall forfeit 5*l.* for every 15 C. 2. c. 11.

tat. 15 *C.* 2. *c.* 11. § 13. and 28 *G.* 3. *c.* 37. § 21. All brew- sels and utensils for brewing, into whose hands soever they me, and by what conveyance or title soever they be claimed, : subject to all the debts and duties of excise in arrear for er or ale made in the said brewhouse; and shall also be sub- all penalties and forfeitures against the laws of excise; hall be lawful to levy debts and penalties, and use such pro- gs against the utensils therein contained, as it may be lawful a case the debtor or offender using the said utensils had been l owner thereof. 15 C. 2. c. 11. 28 G. 3. c. 37. Utensils liable to the penalties and duties.

ines, penalties, and forfeitures, shall be sued for, recovered, gated, as directed by stat. 7 & 8 *G.* 4. *c.* 53. *sect.* 57. *et seq.* *ıte*, p. 87.) and the other statutes before then in force; and general powers of justices (vide *ante*, p. 90.) Recovery of penalties.

tat. 1 *W. & M. sess.* 1. *c.* 24. § 16. 12 & 13 *W. & M. c.* 11. lo information shall be brought against any common brewer ouse-keeper or cider-maker, for any mis-entry or offence, ithin three months after the offence committed; and thereof shall be given to him in writing, or left at his ıg-house, within a week after laying and entering the ıtion. 1 W. & M. sess. 1. c. 24. 12 & 13 W. & M. c. 11.

4 G. 4. c. 51. In the entry of premises, places and utensils shall be distinguished by letters and numbers.

By stat. 4 *G.* 4. *c.* 51. § 12. Every person who shall make, or shall be by law required to make entry of any building, place, or utensil for the brewing or sale of beer or ale under the provisions of this act, or for the purpose of carrying on any trade or business subject to the survey of the officers of excise, shall in every such entry distinguish and describe every such building, place, and utensil, by a particular letter or number, and shall paint such respective letter or number in a large and distinct character upon some convenient and conspicuous part of the walls or doors of every such building or place, and upon some convenient and conspicuous part of every such utensil, and keep and continue the same so painted, and from time to time, when occasion may require, or when requested by the supervisors of excise of the district where situated, renew the same so long as the entry thereof remains uncancelled, so that such letter or number so painted may be easily and readily known by the officers of excise attending to survey the same: And wherever any such person or persons shall use or employ in his or their entered buildings or places any fixed pipe or pipes, he or they shall, at the time of making his or their entry of the places and utensils as aforesaid, deliver with such entry, and as part thereof, a drawing or description, distinctly showing the course, direction, construction, and use of all and every such pipe and pipes, and of all and every branch and branches thereof, and of every cock and cocks thereon, together with the place or places, and utensil or utensils respectively from and to or with which the same lead or communicate; and if any building, place, or utensil shall at any time be found to be used by any person for any such purpose, without being so entered, described, or distinguished, or without such letter or number being so distinctly painted and continued thereon, or any pipe or pipes be found without being so shown in such drawing, or so described as aforesaid, or different from or disagreeing with such drawing or description, every such person or persons using the

Buildings used and not entered, or distinguished as above, offender to forfeit 200*l.*

i, set up, entered, or used respectively as aforesaid, contrary act; and all and every entries or entry of any such house nises so entered and made use of contrary to the true intent eaning of this act, shall be null and void.

. Every person who shall make entry of any buildings or es for brewing beer or ale under the provisions of this act, pecify in such entry the room, storehouse, or place, rooms, uses, or places, in which he shall intend to store the malt h brewing, and shall, when and so often as he shall receive lt, store, lodge, and place the same in one or more of such l rooms, storehouses, or other places, and shall use or no other malt, ground or unground, for brewing beer or ler this act, than such as shall be taken by him, from one e of such entered rooms, storehouses, or places for that e, and of which entry shall on the same day be made in the ereinafter mentioned; and if any such person shall not such entry as aforesaid, or specify and distinguish every om, storehouse, or place as aforesaid, or shall receive or to, or have in his possession, any malt, ground or unground, ewing, without such malt, ground or unground, being , put, or placed by him, her, or them, in one or more of oms, storehouses, or places, entered for that purpose, and l in such book as hereinafter mentioned, or shall use any round or unground, in or for such brewing as aforesaid, t taking the same from one or more of such entered rooms, uses, or other places, and making entry thereof in such s is hereinafter mentioned, every such person or persons so ng as aforesaid, shall forfeit for every such offence the sum l.

Brewer to enter places for keeping malt.

Penalty on receiving into or taking malt from places not entered, 200l.

. Every brewer of beer or ale under this act shall keep a o be delivered to him by the proper officer of excise, which hall be prepared with distinct columns for entering accounts he malt which shall be received by any such brewer to be

The different quantities of malt received and used by

4 G. 4. c. 51.

the quantity of such malt in bushels, and distinguishing whether ground or unground, which shall from time to time be used at such brewery in the brewing or making of such beer or ale, and make every such last-mentioned entry in such book, under the date and on the same day in which such malt was so used; and if any such brewer shall neglect or refuse to make or cause to be made any such entry or entries, or shall cancel, obliterate, or alter, or cause or suffer to be cancelled, obliterated, or altered any such entry or entries, or shall make any untrue entry or entries therein, or shall at any time withhold, conceal, or make away with any such book or any part thereof, every such brewer or brewers so offending shall for every such offence forfeit the sum of 100*l*.

Neglect of entry, &c. 100*l*.

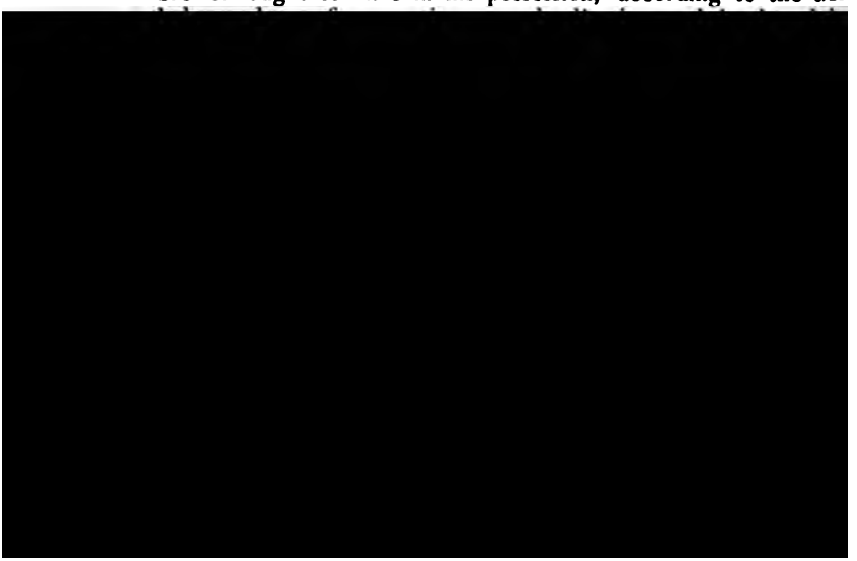
Books to be open to inspection of officers.

§ 15. All such books shall at all times be produced to and left open to the free inspection of the proper officers of excise, who shall be permitted to examine and cast up, and make copies or extracts from the entries contained therein, and to insert therein the time of such inspection, and sign their names thereto, and to take away any such book and deliver any such trader a new book of a similar kind; and if any person shall by any act, matter, or thing, or by any art or contrivance, obstruct or hinder, or cause or permit or suffer to be obstructed or hindered, any officer of excise therein, or in the performance and execution of any of the powers and authorities by this act given, or of his duty in respect thereof, every person and persons so offending shall for every such offence forfeit the sum of 200*l*.

Obstruction to officers, 200*l*.

Malt in stock to be laid regularly and even, to enable the officers to gauge the same.

§ 16. Every such brewer shall, when and so often as thereto required by any officer of excise, cast or place all the malt in his possession in such regular form as may enable the officer of excise conveniently to gauge and ascertain the true quantity thereof; and if upon such admeasurement the quantity of malt then in stock shall be found to disagree with the quantity which such brewer ought to have in his possession, according to the true



shall be taken to be the true quantity of the malt in stock in the possession of such brewer. 4 G. 4. c. 51.

§ 18. On every brewing by any brewer under the provisions of this act, the whole of the worts made on and by such brewing shall be collected and mixed together by such brewer, and made of one and the same quality, before the same or any part thereof shall be cleansed, removed, or run from the fermenting-tun; and no such beer or ale shall be put into or tunned, cleansed, kept, or stored in any cask, vat, or other vessel exceeding the content or size of a butt or pipe of three barrels; and before any such cask, vat, or other vessel shall be used for any such purpose, the same shall be entered at the proper office of excise, and be truly gauged and inched to the satisfaction of the proper officer or officers of excise; and if any such brewer shall on any brewing not collect and mix together the whole of the worts made on and by such brewing, and make the same of one and the same quality, before the same or any part thereof is cleansed, removed, or run from the fermenting-tun, or shall put into, or tun, cleanse, keep, or store any such beer or ale in any cask, vat, or other vessel exceeding such size as aforesaid, or shall make use of the same for any such purpose before the same have been entered, gauged, and inched as aforesaid, or afterwards alter by enlarging or diminishing the same without notice thereof to the proper officer, he shall for every such offence forfeit the sum of 100*l.*; and every cask, vat, or other vessel which shall have been so used as aforesaid, with all the beer contained therein, shall be forfeited, and may be seized by any officer of excise.

Beer not to be cleansed, kept, or stored, in any cask exceeding a butt, or before the same shall have been entered, inched, and gauged by the officer.

Penalty, 100*l.*, &c.

§ 19. When and as often as any beer or ale brewed under the provisions of this act shall be sold and sent out or delivered for consumption or otherwise, in any quantity of four gallons or upwards, such beer shall be sent out by the brewer in a cask on which shall be branded and permanently marked, in large and legible letters, the name of such brewer, and of the place or brewery where such beer was brewed, as well as the numeral figure five, of the length of four inches at the least, to denote the quality of such beer; and if any such brewer shall neglect or refuse to distinguish all such beer when sold and sent out, or delivered in any such quantity or quantities as aforesaid, in a cask which shall be so branded and marked, every such brewer or brewers shall for every such offence forfeit 50*l.*: Provided always, that no such brewer shall be subject to any such penalty in any case where such beer shall be taken away by the person to whom the same may be sold, in any cask produced by him, and then filled for such purpose.

Brewers sending out such beer in quantities of 4 gallons or upwards, to send out same in a cask marked with the name of the trader, the brewery, and the figure 5.

Penalty 50*l.*

Casks produced by persons to whom beer is sold may be used.

§ 20. From and after the passing of this act, every brewer of beer or ale brewed under the provisions of this act, and every brewer of any other beer, ale, porter, or table-beer for sale, shall, before he shall cleanse or remove or run any wort or beer from the fermenting tuns, or into any cask or vessel other than a known tun, cask, or vessel for fermenting beer, and specially entered by such brewer for that purpose, make in writing, in the same book or paper in which every brewer of beer for sale is now by law required to give notice of every intended brewing, and of the quantity of malt by him intended to be used in such intended brewing, and opposite the entry of such notice, and the quantity

Brewers of this and all other beer to make declaration in writing of the strength and quality of beer brewed, after every brewing.

4 G. 4. c. 51.

of malt therein mentioned, a declaration of the whole length or quantity or quality of all the beer brewed by any such brewer at every such brewing, such declaration, when so made, being at the time signed by such brewer, or by his principal servant, the proper handwriting of such person being affixed and subscribed thereto; and if any such brewer shall refuse or neglect to make and enter such declaration in writing, or shall cancel, obliterate, or alter, or cause or suffer or permit to be cancelled, obliterated, or altered, any such declaration or entry; or if any such brewer or their or any of their servants shall make any untrue declaration or entry, or shall not at all times keep such book or paper in some public and open part of his entered premises, ready for the inspection of the officers of excise, or shall, before such declaration or entry is so made, cleanse, remove, or run away any of the beer brewed at such brewing from the fermenting tuns, or into any cask or vessel other than a known tun, cask, or vessel for fermenting beer, and specially entered by such brewer, every brewer so offending shall for every such offence forfeit the sum of 200*l.*

Penalty, 200*l.*

Recovery and application of penalties.

§ 21. All fines, penalties, and forfeitures imposed by this act shall be sued for or mitigated by such ways as any fine, &c. may be sued for or mitigated by any law of excise, or by action of debt, bill, plaint, or information, in any of H. M.'s courts of record at *Westminster*, or in the court of exchequer in *Scotland*; and one moiety of every such fine, &c. shall be to H. M., and the other moiety to him or them who shall discover, or sue for the same.

Commencement of act.

§ 22. This act shall, where no special day is mentioned for that purpose, commence from the 5th day of *July*, 1823.

§ III. (2.) Things sold by Auction.

[17 G. 3. c. 50.—19 G. 3. c. 56.—28 G. 3. c. 37.—29 G. 3. c. 63.—30 G. 3. c. 26.—32 G. 3. c. 11.—c. 41.—38 G. 3. c. 54.—41 G. 3. c. 91.—41 G. 3. U.K. c. 42.—42 G. 3. c. 93.—43 G. 3. c. 69.—



6 G.4. c.81.

By § 8. "Every person exercising or carrying on the trade or business of an auctioneer, or selling any goods or chattels, lands, tenements, or hereditaments by auction, shall, over and above any licence to him or her granted as an auctioneer, take out such licence as is required by law, to deal in or retail, or to vend, trade in, or sell any goods or commodities for the dealing in or retailing or vending, trading in or selling of which an excise licence is specially required, before he or she shall be permitted or authorised to sell such goods or commodities by auction; and if any such person shall sell any such goods or commodities as aforesaid by auction, without having taken out such licence as aforesaid for that purpose, he or she shall be subject and liable to the penalty in that behalf imposed upon persons dealing in or retailing, vending, trading, or selling any such goods or commodities without licence, notwithstanding any licence to him or her before granted as aforesaid, for the purpose of exercising or carrying on the trade or business of an auctioneer, or selling any goods or chattels, lands, tenements, or hereditaments by auction; any thing herein contained to the contrary notwithstanding: Provided always, that where such goods or commodities as aforesaid are the property of any person or persons duly licensed to deal in or retail, or to vend, trade in, or sell the same, such person or persons having made lawful entry of his, her, or their house or premises for such purpose, it shall and may be lawful for any person exercising or carrying on the trade or business of an auctioneer, or selling any goods or chattels, lands, tenements, or hereditaments by auction as aforesaid, being duly licensed for that purpose, to sell such goods or commodities as aforesaid, for and on behalf of such person or persons, and upon his, her, or their entered house or premises, without taking out a separate licence for such sale."

Every auctioneer selling by auction any goods or commodities, for the selling of which an excise licence is specially required, shall take out such licence, over and above his auctioneer's licence, except where the goods are the property of a licensed person, and sold on his behalf on his entered premises.

Penalty for not taking out licences.

By § 26. Every person exercising or carrying on the trade or business of an auctioneer, or selling any goods or chattels, lands, tenements, or hereditaments by auction, without taking out such licence as is required by this act, shall forfeit and lose the sum of 100*l.*

Duties on licences for selling plate, and on hawkers, &c not repealed by this act.

By § 35. It is provided and enacted, "that nothing in this act contained shall extend or be deemed or construed to extend to repeal the excise duties on licences for selling or making gold or silver plate in *Ireland*, or on licences for exercising the trade or calling of a hawker, pedlar, petty chapman, or other trading person going from place to place in *Ireland;* or on licences to travelling tinkers or persons hawking about tea for sale in *Ireland;* or on licences for servants or other persons employed in carrying goods of any such hawker or pedlar; or on horses or other beasts bearing or drawing burthen, which such person shall so travel with in *Ireland;* nor to repeal the duties on excise licences to persons letting horses to hire, for the purpose of travelling post in *Ireland;* or on excise licences to persons trading in, vending, or selling gold and silver plate in *G. B.;* any thing herein-before contained to the contrary notwithstanding."

Note. — And see the several general regulations respecting the duties, fines, licences, &c. &c. contained in this statute, cited at length in the preceding article, "*Ale and Beer.*"

42 G.3. c.93. 43 G.3. c.130.

By stats. 42 *G.* 3. *c.* 93. § 14. and 43 *G.*3. *c.* 130. § 1. Every person who shall exercise the trade of an auctioneer or seller by com-

G.3. c.93.
G. 3. c. 130.

uctioneer to
ve security to
count, &c.

9 G.3. c.56.
2 G.3. c.93.

mission, within the limits of the chief office in *London*, shall, he receives his licence, give bond to the king, with two sure himself in 1000*l.* and his sureties in 200*l.* each (out of the bill bond to be in 50*l.* penalty), that he will account for sales and the duty as hereinafter directed.

And every person exercising the said trade in any part of without the said limits, shall give security by bond as afore himself in 500*l.*, and two securities in 50*l.* each. 19 *G.* 3. § 8. 42 *G.* 3. *c.* 93. § 15.

6 G. 4. c. 81.

And by 6 *G.* 4. *c.* 81. § 9. Auctioneers still continue liabl give this security by bond, being specially excepted by this tion, which relieves other persons from giving securities by at the time of taking out their licences.

Duties.

By stats. 43 *G.* 3. *c.* 69., 45 *G.* 3. *c.* 30., and 55 *G.* 3. *c.* 142., d are imposed upon the proceeds of sales by auction, *viz.*: —

55 G.3. c.142.

55 G. 3. *c.* 142. For every 20*s.* of the purchase-money £ arising or payable by virtue of any sale at auction in *G. B.*, for the benefit of the growers or first purchasers respectively, of any sheep's wool, the growth or produce of any part of the U. K. - - - 0

43 G.3. c.69.
55 G.3. c.30.

43 *G.* 3. *c.* 69. 6*d.* — 45 *G.* 3. *c.* 30. 1*d.* — For every 20*s.* of the purchase-money arising or payable by virtue of any sale at auction in *G. B.*, of any interest, in possession or reversion, in any freehold, customary, copyhold, or leasehold lands, tenements, houses, or hereditaments, and any share or shares in the capital or joint stock of any corporation or chartered company, and of any annuities or sums of money charged thereon, and of any ships and vessels, and of any reversionary interest in the public funds, and of any plate or jewels, and so in proportion for any greater or less sum of such purchase-money - - - 0

43 G.3. c.69.
[illegible] c.30.

43 *G.* 3. *c.* 69. 10*d.* — 45 *G.* 3. *c.* 30. 2*d.* — For every 20*s.* of the purchase-money arising, or payable, by virtue of any sale at auction in *G. B.*, of furniture, [illegible] books, horses and carriages, and all [illegible] whatsoever, and so in proportion [illegible] money

er imported into *G. B.* shall be free of the duty on the first sale hereof by auction on account of the importer; so as the same e entered at some custom-house at the port of importation, nd the sale thereof be within twelve months, and by a licensed uctioneer. Certain provisions.

By stat. 30 *G.* 3. *c.* 26. All goods imported by way of merchandise rom *Yucatan*, and by 32 *G.* 3. *c.* 41. all whale-oil, (and by 41 *G.* 3. J. K. *c.* 42. all elephant-oil produced from sea-cows or sea-elephants, and commonly called "elephants' oil,") whale-bone, mbergris, and head-matter, and all skins of seals, and other anials living in the sea, and also elephants' teeth, palm-oil, dyeing-rood, drugs, and other articles for dyers' use, and all mahogany nd other unmanufactured wood for the use of cabinet-makers nd other manufacturers, imported in *British* ships from *Africa*, nd (by 42 *G.* 3. *c.* 93. § 3.) *America*, or any *British* settlement broad, shall be free of the excise-duty on the first sale thereof t auction, by or for the account of the original importer to whom the same were consigned, and by whom they were entered t the custom-house, so as such sale be made within twelve months after such goods are imported, and the same be sold by a licensed auctioneer. 30 G.3. c.26. 32 G.3. c.41. 41 G.3. U.K. c.42. Goods from Yucatan, whale and other oils, wood, &c. 42 G.3. c.93.

By stat. 19 *G.* 3. *c.* 56. § 13. Nothing in this act shall extend (1) to any sale by auction of estates or chattels made by order of the court of chancery or exchequer, or courts of great sessions in *Wales*; 19 G.3. c. 56. Further exceptions.

nor (2) to any sale made by the *East India* or *Hudson's Bay* companies;

nor (3) by order of the commissioners of customs or excise;

nor (4) by order of the board of ordnance;

nor (5) by order of the commissioners of the navy or victualling offices;

nor (6) § 15. to any such sales made by the sheriff, for the benefit of creditors, in execution of judgment;

nor (7) to sales of goods distrained for rent;

nor (8) to sales for non-payment of tithes;

nor (9) § 15. to sales of effects of bankrupts sold by assignees;

nor (10) to goods imported by way of merchandise from any *British* colony in *America*, the same being of the growth, produce, or manufacture of such colony, on the first sale thereof, on account of the original importer to whom they were consigned, and by whom they were entered at the custom-house, so as such sale be made within twelve months after importation; (see 59 *G.* 3. *c.* 54. § 3. *post.*)

nor (11) to any ships or their cargoes condemned as prize, and sold for the benefit of the captor;

nor (12) to any ships or goods wrecked or stranded, sold for the benefit of the insurers or proprietors;

nor (13) to the sale of any goods damaged by fire, and sold for the benefit of the insurers;

nor (14) § 14. to any auction to be held on the account of the lord or lady of the manor for granting any copyhold or customary messuages, lands, or tenements, for the term of a life or lives, or any number of years;

nor (15) § 14. to any auction to be held for the letting or demising any messuages, lands, or tenements, for the term of a life or lives,

19 G.3. c.56. or any number of years, to be created by the person on whose account such auction shall be held;

nor (16) § 14. to the sale of any wood, coppice, produce of mines or quarries, or materials for working the same, or to the sale of any cattle, and live or dead stock, or unmanufactured produce of land, — so as such sale of woods, coppices, produce of mines or quarries, cattle, corn, stock, or produce of land may be made whilst they continue on the lands producing the same, and by the owner of such lands, or proprietor of or adventurer in such mines or quarries, or by their steward or agent. See also stat. 17 *G.* 3. *c.* 50. § 11, 12, 13.

52 G.3. c.53. Coffee imported from British colonies.

By stat. *52 G.* 3. *c.* 53. § 1. All coffee imported in any *British* ship from any *British* colony in *America*, shall be sold by auction free of the auction-duty, whilst the same shall remain in warehouses, under the act 43 *G.* 3. *c.* 132., or any other act.

59 G.3. c.54. Certain imports from United States.

By stat. *59 G.* 3. *c.* 54. § 3. All goods and effects imported in any ship built in the said United States of *America*, or condemned as prize there, and being owned and navigated as herein-before mentioned, shall and may be sold by action free of auction-duty; but nothing herein shall authorise the sale of any such goods or effects free of the said duty unless on the first sale thereof by, or for the account of the original importer by whom the same were entered at the custom-house at the port of importation, nor unless such sale shall be made within twelve months next after the time when such goods or effects shall have been so imported. (See *ante*, 19 *G.*3. *c.*56. § 15. (10))

5 G.4. c.75. Goods of the Portuguese dominions imported under stat. 51 G.3. c.47.

By stat. *5 G.*4. *c.* 75. § 2. All goods and effects imported under stat. *51 G.* 3. *c.* 47. into any part of the U. K. in any vessel built in any of the territories or dominions in the said act mentioned, or condemned as prize there, and being owned and navigated as in the said act is mentioned, shall be sold by auction free of auction-duty: Provided that nothing in this act shall authorise the sale of any such goods, so free of the said duty, unless on the first sale thereof, by or for the account of the original importer, by whom

Proviso.



ting forth whether or not any such sale had been or was opened, or begun, under such notice, or any article, lot, parcel, or thing contained in such catalogue was bid for or sold at such auction; and such auctioneer, or person acting as his clerk as aforesaid, shall make oath to the truth of such declaration before the said commissioners or collector, on pain of forfeiting 50*l.* for every neglect or refusal of delivering such declaration, verified as aforesaid. 32 G.3. c.11.

Provided (19 *G.* 3. *c.* 56. § 12.), that if the real owner shall become the purchaser by his own bidding, or the bidding of any other on his behalf, without fraud or collusion, the commissioners, or authorised officers, shall make to the owner an allowance of the said duties; provided notice [in writing, signed by the owner and intended bidder, 28 *G.* 3. *c.* 37. § 20.] be given to the auctioneer before such bidding, both by the owner and person intended to be the bidder, of such person being appointed by the owner; and provided such notice be verified by the oath of the auctioneer, as also the fairness of the transaction, to the best of his knowledge and belief; in case of dispute, the proof of the fairness to lie upon the auctioneer. 19 G.3. c.56. Buying in by the owner. 28 G.3. c.37.

By stat. 42 *G.* 3. *c.* 93. § 1. The allowance aforesaid shall be made to the owner of any estate, goods, or effects, in respect whereof the auction-duties shall not have been actually paid, and which have been or shall be put up to sale by way of auction, and bought in for the owner, either by his steward or known agent, actually employed in the management of such sale, or under a notice in writing, signed as well by him as by the person intended to be the bidder being appointed by the owner, and having accordingly agreed to bid for the use of the seller; provided, that no such allowance shall be so made unless notice in writing, signed by such steward or agent, of his being about to bid for such owner, shall have been given to the auctioneer before such bidding; such delivery to be verified by the auctioneer's oath, and also the fairness of the transaction to the best of his knowledge and belief. 42 G.3. c.93.

And by stat. 19 *G.*3. *c.* 56. § 12. and 42 *G.* 3. *c.* 93. § 2. No such allowance shall be made, unless, at the passing of his account, such notice be produced by the auctioneer; and if any dispute shall arise concerning the fairness of the transaction, the proof thereof shall lie on the auctioneer; and on failure therein, or in case of any unfair practice, no such allowance shall be made. 19 G.3. c.56. 42 G.3. c.93. Notices to be produced by the auctioneer; and proof of fairness to lie on him.

By stat. 19 *G.* 3. *c.* 56. § 6. The aforesaid duties shall be a charge upon the auctioneer, immediately upon knocking down the hammer, or other closing of the bidding. 19 G.3. c.56. Duty how to be paid.

§ 7, 8. And he shall (in pursuance of his bond entered into at the time of his licensing) within twenty-eight days, if it is within the limits of the chief office of excise in *London*, elsewhere within six weeks, deliver in an *account* in writing of the total amount of the money bid at each sale, and the several articles, lots, or parcels there sold, and the price of each: Account.

And shall at the same time make *payment* of the duties, which he may retain out of the produce of the sale, or deposit made at such sale, or otherwise recover the same by action of debt, or on the case, against the person who employed him, or on whose account the goods were sold: Payment.

19 G.3. c.56. Oath.

Every person so acting as auctioneer, or the person wh as his clerk at such sale, if any, shall make *oath* to the trut account.

If such auctioneer shall neglect to deliver in his accou make payment, or if it shall appear that it was not a true account, the commissioner may put his bond in suit, unl shall find sufficient cause to forbear the same; and, in c verdict or judgment against him, the licence shall be void.

§ 10. But if such auctioneer, not being within the limit chief office of excise in *London*, shall not be prepared to in his account to the collector within whose collection th was delivered, and such sale by auction made, he may d his said account within six weeks after every such sale at t office of excise in *London*, and at the same time delive copy of the notice and of the catalogue delivered by him b the collector; and if he shall neglect to deliver such cop said notice, or of the said catalogue, he shall forfeit *20l.*

38 G.3. c.54. Penalty on auctioneers not paying duties on sales in the legal time, &c. double the duty, and forfeiture of bond.

By stat. 38 *G.* 3. *c.* 54. § 2. Every auctioneer, who shall or refuse to make payment within the time limited by law duty chargeable on sales by way of auction by him hel forfeit double the said duty; and in case within fourteen d after such auctioneer shall have been convicted in such and execution or process shall have issued on such convi levy such penalty, he shall not have sufficient goods or whereon to levy the whole of such penalty, and the same, part thereof, shall remain unpaid at the end of such fourte or if it shall appear that he hath acted contrary to the tru and meaning of his bond, the said commissioners may cau bond to be put in suit against him and sureties, unless th see sufficient cause to forbear the same; and in case of a against such auctioneer, his licence shall be void.

If auctioneers make over-payments of duties,

§ 3. Whereas there is no provision at present to relie tioneers against any over-payment made, except in case sales are rendered void by reason of the person for wh

rate in the catalogue the particular goods and effects then to be sold; and the assignees, or assignee if only one, shall subscribe and sign such catalogue, and certify at the foot thereof, that all the estates and effects were really and truly the property of the said bankrupt at the time of suing out the commission; which respective catalogue, so signed and certified, shall be produced by the auctioneer to the person to whom he is to deliver his account, before he shall be permitted to pass his account, or to have the same allowed. And if such *sheriff*, *under-sheriff*, or *assignee* shall insert or suffer to be inserted in such catalogue, any estate or effects other than such as were really and truly the property of the debtor or bankrupt, or shall not certify in the catalogue the true sum to be levied, he shall forfeit 20*l*. 19 G.3. c.56.

§ 17. And every auctioneer employed to sell any goods damaged by *fire* for the benefit of the *insurers*, shall specify and enumerate in the catalogue the particular goods then to be sold; and the *insurers*, or the *insurer* if only one, shall subscribe and sign such catalogue, and certify at the foot thereof, that all the goods in such catalogue were really and truly sold for the benefit of the insurers; which catalogue so signed and certified shall be produced by the auctioneer to the person to whom he is to deliver his account, before he shall be permitted to pass his account, or to have the same allowed. And if such *insurer* shall insert or suffer to be inserted in the catalogue any goods other than such as were really and truly to be sold for the benefit of him or them as aforesaid, or shall not certify on the catalogue the true particular of the goods to be sold, he shall forfeit 20*l*. Goods damaged by fire.

§ 11. If any sale of any estate, goods, or chattels shall be rendered void, by reason that the person for whose benefit they were sold had no title to the same, or no right to dispose thereof; then it shall be lawful for the auctioneer who paid the duty for the thing so sold, or for the person for whose benefit the same was sold, to lay his complaint before the commissioners of excise, or justices of peace, within whose jurisdiction such sale was made, and they are required to hear and determine the same, and examine the witnesses upon oath; and thereupon, or by other due proof, to relieve the party of so much as shall be made out to have been overpaid. Sale void for defect of title.

By stat. 51 *G.*3. *c.* 95. § 1. The commissioners of excise or justices, before whom any such complaint shall have been so laid [under stat. 19 *G.* 3. *c.* 56. § 11.], and by whom the same shall have been so determined, and such relief given, shall grant their warrant (*a*), di- 51 G.3. c.95. Commissioners or justices relieving under 19 G.3. c.56. § 11. to grant warrants to excise collectors to pay complainant the sums overpaid.

(*a*) Form of Warrant to repay the Auction Duty where a Sale becomes void for defect of Title, pursuant to stat. 19 *G.*3. *c.* 56. § 11.

County of ——— to wit. } To the Collector of Excise for the ——— collection for the time being.

WHEREAS complaint hath been made before us whose names are hereunto subscribed, two of his majesty's justices of the peace, acting in and for the said county, by A. B., *auctioneer, that an estate at* ———, *in the said county, was sold on the* ——— *day of* ——— *last, by auction, for the benefit of* S. T., *and the duty of excise arising from such sale, amounting to* ——*l., hath been paid to you, the said collector of excise, for the collection aforesaid: And it hath been since discovered, that the said* S. T. *hath no title or right to dispose of the same estate, or any*

51 G.3. c.95. rected to the proper collector of excise, authorising and requiring him to allow and pay to the party so complaining and relieved, out of the duties on sales at auction which shall next come to the hands of such collector, the full amount of such payment as shall be so made out before them to have been over-paid.

28 G.3. c.37. But by stat. 28 *G.* 3. *c.* 37. § 19. All such complaints shall be laid within twelve calendar months after such sale, if the same be rendered void as aforesaid within the time; but if otherwise, then within three calendar months after the discovery of such defect of title, and not otherwise.

A bidder may retract his bidding before the hammer is down.

In *Payne* v. *Cave*, 3 *T. R.* 148. it was determined that a bidder at an auction, under the usual conditions that the highest bidder shall be the purchaser, may retract his bidding any time before the hammer is down; for the auctioneer is the agent only of the vendor, and the assent of both parties is necessary to make the contract binding. Every bidding is nothing more than an offer on one side, which is not binding until assented to by the seller, which is signified on his part by knocking down the hammer.

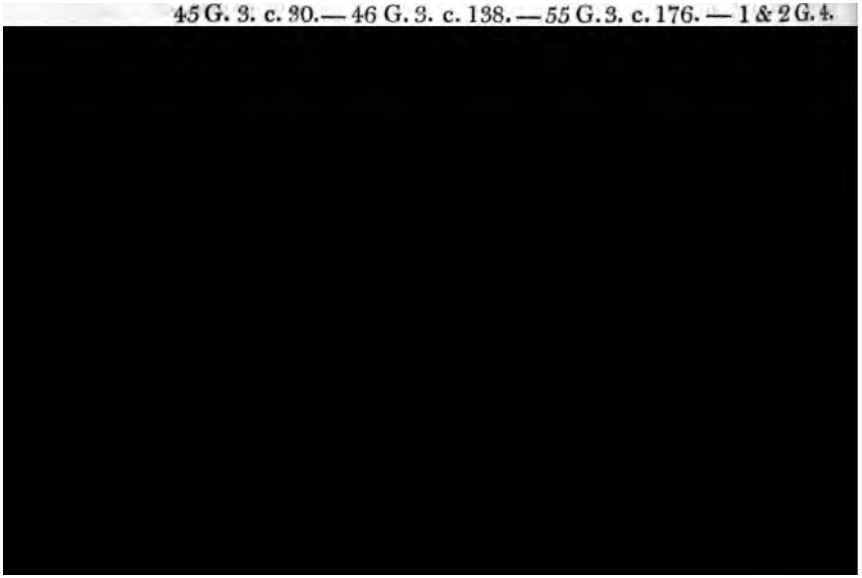
If the owner of an estate put up to sale by auction employ puffers to bid for him, it is a fraud on the real bidders, and the highest bidder cannot be compelled to complete the contract. *Howard* v. *Castle*, 6 *T. R.* 642. recognized in 8 *T. R.* 93. 95.

19 G.3. c.56. 43 G.3. c.130. 55 G.3. c.30. **Levying forfeitures.**

Finally, by stats. 19 *G.* 3. *c.* 56. § 18. 43 *G.* 3. *c.* 130. § 2., and 55 *G.* 3. *c.* 30. § 9. all fines, penalties, and forfeitures shall be sued for, recovered, or mitigated as by the laws of excise, or sued for in the courts at *Westminster*; and be distributed (all necessary charges first deducted), half to the king, and half to him that shall sue.

§ III. (3.) Bricks and Tiles.

[24 G. 3. sess. 2. c. 24. — 25 G. 3. c. 66. — 27 G. 3. c. 13. — 28 G. 3. c. 37. — 34 G. 3. c. 15. — 42 G. 3. c. 93. — 43 G. 3. c. 69. — 45 G. 3. c. 30. — 46 G. 3. c. 138. — 55 G. 3. c. 176. — 1 & 2 G. 4.



mne is so bent, and such sides not being at any part thereof than five inches distant from each other on the inside, and as y of the dimensions, and bent as nearly into the form afore- s may be, to be used for the purposes aforesaid, shall not be ct to any of the said duties. 34 G. 3. c. 15.

d by stat. 42 *G.* 3. *c.* 93. § 22. The exemption is extended to nade for such purpose not less than nine inches long, such in every other respect of the same description and dimension fore prescribed. 42 G. 3. c. 93.

d by stat. 46 *G.* 3. *c.* 138. § 3. It is further enacted, that elliptical tiles not exceeding in inside width six inches, and sight of which from the outside of the crown of the arch in a ndicular line to the extreme edge shall in all cases exceed idth, but with a foot from the bottom of the arch where ne- ry, not exceeding two inches in breadth, for the purpose eping up the tiles in loose soils, made for draining wet or by lands, shall be exempted from the excise duty. 46 G. 3. c. 138.

d by § 4. Any person using any such tile for any other pur- than above mentioned, incurs the penalty of 6*d.* for each tile d. Penalty.

stat. 55 *G.* 3. *c.* 176. it is enacted, that it shall be lawful d for any person or persons whatever to make, for the sole se of serving for the foundations or support of tiles bent into emi-elliptical form prescribed by stat. 34 *G.* 3. *c.* 15., or as y into the said form as may be, and of the dimensions and s allowed by the said act and stat. 42 *G.* 3. *c.* 93., to be for the purpose of draining wet or marshy lands, flat tiles xceeding one inch in thickness, each thereof having at one semi-circular projection, and at the other a semi-circular or indent, such projection and arch being portions of circles ual diameters, and each such tile being also not less than nches in length and not exceeding seven inches in breadth, flat tiles being also perforated with circular holes, each of being not less than two inches in diameter, and the sum areas of such holes in each such flat tile amounting to ss than a quarter part of the surface or superficial con- of such flat tile, and no such flat tile being fit or proper e purpose of being used in building, or in the roof or co- of any house, shed, or other building whatever, without charged or chargeable with any duty for or in respect of flat tiles. 55 G. 3. c. 176. Tiles may be made of a certain construction to serve for draining, duty-free.

stat. 1 & 2 *G.* 4. *c.* 102. § 2., after reciting stat. 55 *G.* 3. ., it is enacted, that it shall be lawful for any person to make les for the sole purpose of serving for the foundations or rt of such semi-elliptical tiles as shall be made and appli- and fit for the sole purpose of draining wet or marshy lands, o such flat tile being fit or proper for the purpose of being in building, or in the roof or covering of any house, shed, er building whatever, or otherwise than as aforesaid, with- ing charged or chargeable with any duty for such flat tiles. 1 & 2 G. 4. c. 102. Flat tiles for the foundation of semi-elliptical tiles used for draining lands exempted from duty.

t. 5 *G.* 4. *c.* 75. § 9. For the giving further encouragement draining wet and marshy lands, enacts, that from the 17th 1824, it shall be lawful for any person or persons to make r bricks for the sole purpose of draining wet or marshy without being charged or chargeable with any duty for or in 5 G. 4. c. 75. Tiles or bricks may be made for draining land duty-free, provided they

5 G.4. c.75.

respect thereof: Provided always, that all such tiles and bricks shall be made upon the land for the draining of which they shall be used, or within a quarter of a mile of such land; and that if any such tiles or bricks shall be used in the erecting, or in the roofing or covering of any house, shed, or other building, or otherwise than for such purpose of draining as aforesaid, the same shall be charged and chargeable with the duty, in like manner as other tiles or bricks are chargeable under any act or acts in force immediately before the passing of this act.

are made on such land or within a quarter of a mile of it.

24 G.3. c.24. Notice to be given.

By stat. 24 *G.* 3. *sess.* 2. *c.* 24. § 4. Every maker of bricks or tiles, before he begins to make, shall give or leave notice in writing at the next excise office of his name and place of abode, and of the sheds, workhouses, or other places where he intends to make such bricks or tiles, on pain of 100*l.*

When the duty shall be charged.

§ 5. 11. 14. All bricks or tiles chargeable with the said duties shall be taken account of, and charged by the officer whilst they are drying, after being turned out of the moulds, and before removed to the kiln or clamp for burning, for which purpose any officer may enter into the fields, sheds, or other places where making, and take an account thereof in writing, and leave a copy (if demanded) with such maker, on pain of 40*s.*; and if any person shall obstruct such officer, he shall forfeit 50*l.*

Obstructing the officer.

Allowance for waste.

§ 6. The officer in charging the duty shall allow ten for every 100 when charged in the field before burnt, in compensation for all waste, loss, or damages.

25 G.3. c.66. Not to be removed until the officer has charged the duties.

And by stat. 25 *G.* 3. *c.* 66. § 2. If the maker shall remove any bricks or tiles to the kiln, clamp, or other place for burning, from or out of the field or place where they shall be put to dry, before the officer shall have taken an account thereof, he shall forfeit 50*l.* And all so carried away, and found in the possession of any maker or trader therein, or person for his use, shall be forfeited, and may be seized, or the value thereof, and shall be recovered, one moiety to the king, the other to the informer.

Stat. 24 G. 3. sess. 2. c. 24. § 8. provides that no such maker

ien due thereon, on pain of double duty. And if any person ry away such bricks or tiles before the duty be cleared off, forfeit double the value thereof. But such maker shall not, ing such entry, be obliged to go further than the next own. 24 G.3. sess.2. c.24.

And all tools, implements, and utensils used in making cks or tiles, in custody of such maker, shall be liable to be r any debts or penalties (arising or incurred under this act), the debtor or offender be the lawful owner thereof or not. 28 G. 3. c. 37. § 21. Utensils liable.

17, 18. Bricks or tiles for which the duties have been paid exported, and on security given before the shipping thereof same shall not be re-landed, the person exporting the ill be allowed a drawback of such duties; and in case such r tiles shall be re-landed, the same shall be forfeited to the l. M. over and above the penalty of such bond. See 27 G.3. ied. (F.) Bricks, &c. may be exported, duty free.

21. All penalties and forfeitures are to be sued for, levied, tigated as by the laws of excise or in the courts at ster, and to be distributed half to the king, and half to t shall sue. Penalties how to be recovered.

§ III. (4.) Candles.

c. 9. — 10 Ann. c. 26. — 11 G. I. c. 30. — 12 G. I. c. 28. G. 2. c. 21. — c. 24. — 24 G. 2. c. 40. — 26 G. 2. c. 32. G. 3. c. 43. — 10 G. 3. c. 44. — 24 G. 3. sess. 2. c. 11. — — c. 41. — 25 G. 3. c. 74. — 26 G. 3. c. 77. — 27 G. 3. c. 31. G. 3. c. 37. — 42 G. 3. c. 93. — 43 G. 3. c. 69. — 49 G. 3. — 53 G. 3. c. 103. — 55 G. 3. c. 30. — 59 G. 3. c. 32. — — 3 G. 4. c. 27. — 6 G. 4. c. 81. — 6 G. 4. c. 111.]

tat. 6 G. 4. c. 81. § 2. Every maker of wax candles or eti candles for sale shall annually take out an excise and pay for the same the annual sum or excise-duty of 5*l.* ery chandler, or maker of candles for sale, other than wax maceti candles, shall also annually take out an excise and pay for the same the annual sum or excise-duty 6 G.4. c.81. Makers of wax or spermaceti candles for sale to be licensed annually. Also tallow chandlers.

ersons in partnership need only take out one licence for se. 6 G. 4. c. 81. § 7. Persons in partnership.

— And note the several general regulations respecting the fines, licences, &c. &c. contained in this statute, cited at in the preceding article, Ale and Beer.

tat. 25 G. 3. c. 74. § 25. No person residing within the f the head office shall be permitted to make candles, unless ipy a tenement of 10*l.* a year, and for which he shall be l in his own name, and shall also pay to the parish rates; re, unless such person shall be assessed and pay to church r where he resides. And no entry made shall avail any for any longer time than he shall be qualified as aforesaid. 25 G.3. c.74. Makers of candles to be rated.

at. 43 G. 3. c. 69. *sched.* (A.) In lieu of any subsisting du- xcise, other duties are imposed. Duties. 43 G.3. c.69.

for the duties on importation, see the schedule annexed to 6 G. 4. c. 111. 6 G.4. c.111.

24 G.3. c.11. Compounding abolished.

By stat. 24 *G.* 3. *sess.* 2. *c.* 11. § 10. All powers given to the excise officers or other persons by former acts, to compound with any person for the duties on candles, ceased.

8 Ann. c.9. 24 G.3. c.11. Rushlights excepted.

The said duties not to be charged on such small rushlights as shall be made by any persons to be used in their own houses only; so as none of them be sold or delivered out or made for sale, and so as they be once only dipped in or once drawn through grease or kitchen-stuff, and not at all through any tallow melted or refined. 8 *Ann. c.* 9. § 31. — 24 *G.* 3. *sess.* 2. *c.* 11. § 5.

8 Ann. c.9. Oil not to be used instead of candles.

During the continuance of the duties upon candles, no person shall use in the inside of his house any lamp, wherein any oil or fat (other than oil made of fish within *G. B.*) shall be burned for giving light, on pain of 40*s.* 8 *Ann. c.* 9. § 18.

Places for making candles to be entered.

§ 6. No maker of candles shall erect, set up, alter, change, or use any melting-house, workhouse, warehouse, storehouse, shop, room, or other place for the making or keeping of candles, or for the melting or keeping any wax, tallow, or other materials proper to be made into candles; or use any copper, furnace, moulds, or other vessel for melting wax, tallow, or other materials to be made into candles; without notice thereof being first given in writing at the next office of excise, on pain of 50*l.*

§ 17. And all candles, wax, tallow, and other materials for making candles, which shall be found in any private melting-house, workhouse, or other place, and all private coppers, furnaces, and other vessels, for which no entry shall be made, or notice given, shall be forfeited, or the value thereof.

11 G.1. c.30.

By stat. 11 *G.* 1. *c.* 30. § 23. If any maker of candles shall use any melting-house, shop, or other place for making or keeping candles, or for melting or keeping wax, tallow, or other materials, or use any copper, furnace, or other vessel for melting the same, or any moulds or other utensils for making of candles, without having made entry thereof in writing at the next excise office, he shall forfeit 100*l.* for every such melting-house or other place, and for

[redacted]

time obstruct or hinder any officer of excise from entering any house, workhouse, room, or place, entered or made use of by any melter of tallow, fat, grease, or kitchen-stuff, for the melting, rendering, or keeping of any tallow, &c., or from inspecting, surveying, or taking an account or sample of any tallow, fat, grease, or kitchen-stuff, or other materials, barilla, kelp, black ashes, lees, ley or lye, in the possession of any melter, such melter so offending, shall for every offence forfeit the sum of 200*l.*; and all barilla, kelp, black ashes, lees, ley or lye, found in the possession of any such person, not being an entered soapmaker, shall be forfeited, and may be seized by any officer of excise. 59 G.3. c.90. maker's premises. Officer not to be obstructed. Penalty 200*l.*

By stat. 8 *Ann. c.* 9. § 10. The officer shall at all times, and if in the night then in the presence of a constable, be permitted on his request to enter the house, melting-house, warehouse, or other place belonging to or used by any maker of candles; and by weighing or tale of the candles, or otherwise, to take an account of the quantity; and shall thereof make a return in writing to the commissioners, or to whom they shall appoint; leaving a true copy of such report, under his hand, with or for the maker; and if he shall refuse or neglect to leave such copy (on demand thereof made in writing, 12 *G.* 1. *c.* 28. § 30.), he shall forfeit 40*s.* 8 Ann. c.9. Officer to enter and take account.

By stat. 11 *G.* 1. *c.* 30. § 24. The officer, between five in the morning and eleven in the evening, with or without a constable, and between eleven in the evening and five in the morning with a constable, shall be permitted on request to enter and search; and all chests and other like things locked up shall on his request be opened: on pain that every person obstructing or molesting him shall forfeit 100*l.* 11 G.1. c.30.

By stat. 24 *Geo.* 3. *sess.* 2. *c.* 11. § 7. But the officer shall at all times, by day or by night, be permitted, upon his request, to enter into the house, warehouse, melting-house, or other place whatsoever belonging to or used by any maker of candles, in like manner as such officers might before have done in the day-time. 24 G.3. c.11.

But by stat. 27 *G.* 3. *c.* 31. § 20. No officer shall enter such workhouse or place between the hours of *eleven* at night and *five* in the morning without the presence of a constable or peace-officer, unless such maker shall have any course or making of candles unfinished or in operation; or shall have any legal notice depending of his intention to make between those hours; or shall have made any preparation for making any course or making of candles. 27 G.3. c.31. Exception.

§ 18. No entry shall be deemed to be withdrawn whilst any duty shall be depending and unpaid, or any copper, furnace, or other utensil shall be standing in any such melting-house, workhouse, warehouse, storehouse, shop, room, or other place. No entry deemed withdrawn whilst any duty unpaid.

By stat. 11 *G.* 1. *c.* 30. § 25. If the officer, on searching any unentered house or place, shall find candles either made or making, or tallow or other materials, melting or melted, or cottons or ashes spread, or any copper, mould, or other utensil warm with tallow or other materials; this shall be sufficient evidence to convict the offender in the penalty of 100*l.* for having used the same not being entered. 11 G.1. c.30. Finding candles, &c. in unentered places.

§ 26. And leaving a summons at the place where the discovery was made, directed to the person prosecuted by his right or as- Summoning offenders.

sumed name, shall be deemed as effectual as if personally delivered to him, and by his proper name. *Vide ante.*

10 Ann. c. 26. 11 G. 1. c. 30. 24 G. 3. c. 11. Notice to be given of the time of making.

By stat. 10 *Ann. c.* 26. § 106, 107. 11 *G.* 1. *c.* 30. § 27. 24 *G.* 3. *sess.* 2. *c.* 11. § 9. Every maker of candles for sale shall, before he begins to work upon, make, or dip any course or making of candles, not being mould candles [but by 24 *G.* 3. *sess.* 2. *c.* 11. § 9. the exception of *mould candles* is taken away], or make preparation for the same, give notice in writing to the officer of such his intention, and declare the time of the day or night when he intends to begin, and the number of sticks of which such making is intended to consist, and the size and number of candles on each stick, and the number and size of the moulds he intends to fill and draw, and how often they are intended to be filled and drawn in each making; and in default thereof, or if he have at such making more sticks or more candles, or of a larger size, or more or larger moulds, or shall draw the said moulds a greater number of times than mentioned in such notice or declaration, he shall forfeit 50*l.*, (or after the weighing by the officer increase the weight of such candles, by re-dipping or otherwise, he shall forfeit 10*l.*) And if after such notice he shall not begin at the time mentioned therein, or within three hours of it, such notice shall be void.

25 G. 3. c. 74. Times limited for giving such notice.

By stat. 25 *G.* 3. *c.* 74. § 29. Every such maker shall give to such officer notice in writing of the hour when he intends to begin to spread cottons, wicks, or rushes, for any course or making of candles, and the hour and time when he intends to begin to run in or dip such wicks, which notice shall be given (if within the limits of the *head office*, six hours; if in any *city* or market-town, twelve hours; elsewhere, twenty-four hours) before he shall begin, on pain of forfeiting 50*l.* for every time he shall so begin.

§ 30. And if such maker shall not begin and proceed at the time mentioned in such notice, or within three hours next after, such notice shall be void.

26 G. 3. c. 77. To continue

By stat. 26 *G.* 3. *c.* 77. § 6. Every maker of candles having begun to spread cottons, wicks, or rushes, for any course or

By stat. 27 *G.*3. *c.* 31. § 21. every candlemaker shall, at his own expense, find and affix sufficient fastenings, to be approved of in writing by the surveyor or supervisor, to every furnace, copper, pan, or other utensil used for melting materials to be made into candles; and also covers with proper fastenings, to be approved as aforesaid, to every dipping mould which such maker shall have in his custody; and every such utensil shall be securely locked, fastened, or sealed by the officer, as soon as any melting shall be finished; and every such dipping mould, with the cover, shall be locked, fastened, or sealed in like manner, as soon as the dipping shall be finished. And such maker shall provide a secure room, place, or chest with fastenings, to be approved as aforesaid, for locking up all moulds for making mould candles, which shall be there locked up and secured by such officer when the same shall cease to be used. And when such maker shall be desirous to light a fire, and to have the furnace-door, copper, pan, or utensil or dipping-mould opened, or to use such moulds, he shall give to such officer six hours' notice in writing if within the limits of the *chief office;* twelve hours if he shall reside *in any market-town;* and twenty-four hours if he reside *out of a market-town;* and such officer shall attend at the time mentioned in such notice, and open such doors and places, as the case may require; and if such maker shall not light a fire, or shall not proceed to use such utensils, within one hour after the doors are opened, such notice shall be void, and such officer shall proceed to lock up and secure the same again in manner as aforesaid, and such maker shall be obliged to give a fresh notice. And if such maker shall neglect or refuse to do and perform any of the matters aforesaid, or to pay for any locks, keys, or other necessary fastenings which shall have been provided by such officer, or if any person shall hinder any officer in fixing such locks or fastenings, or in locking, sealing, or securing the same in such manner as he shall think most effectual to answer the purposes of this act, or shall open any such furnace, copper, pan, utensil, dipping-mould, or door, before the same shall have been opened by the officer, or shall wilfully break or damage any lock, seal, or fastening; he shall for every such offence forfeit 100*l.*

27 G.8. c.31. Furnace doors, &c. to be locked or secured.

§ 22. If there shall be on the premises in the custody of any candlemaker any mould proper to be made use of for making mould candles, not locked up and secured as aforesaid, unless after notice given as aforesaid; every such maker shall forfeit 100*l.*

Having moulds not locked up.

By stat. 8 *Ann. c.* 29. § 12, 13. The officer shall be permitted to take an account of the quantities of wax, tallow, and other materials; and if he shall miss any that he had taken account of at the last time he was at the maker's, and shall not on demand receive satisfaction what is become thereof, the officer may charge such quantity of candles as the materials so missing in his judgment would have made, not exceeding 108lb. of candles for every 112lb. of materials missing, and so proportionably. And if any such maker shall obstruct the officer, he shall forfeit 20*l.*

8 Ann. c.9. The officer shall charge for materials missing.

§ 29. Candles cracked or spoiled in making may be defaced by the officer, who shall make allowance for the duty.

Candles spoiled in making.

§ 14. No maker of candles (on pain of 20*l.*) shall remove any candles before the officer hath taken account of the same, without giving to the officer, within the bills, twenty-four hours' notice,

Removing candles before charged with the duty.

8 Ann. c. 29. and elsewhere, two days' notice, of his intention to remc same.

Candles uncharged to be kept separate from those charged with duty.

§ 15. The maker shall keep his candles which have n surveyed separate from all other candles which have be veyed for twenty-four hours after making within the bills, two days elsewhere; unless they shall have been sooner su by the officer; on pain of 5*l*.

5 G. 3. c. 43. Search for candles concealed.

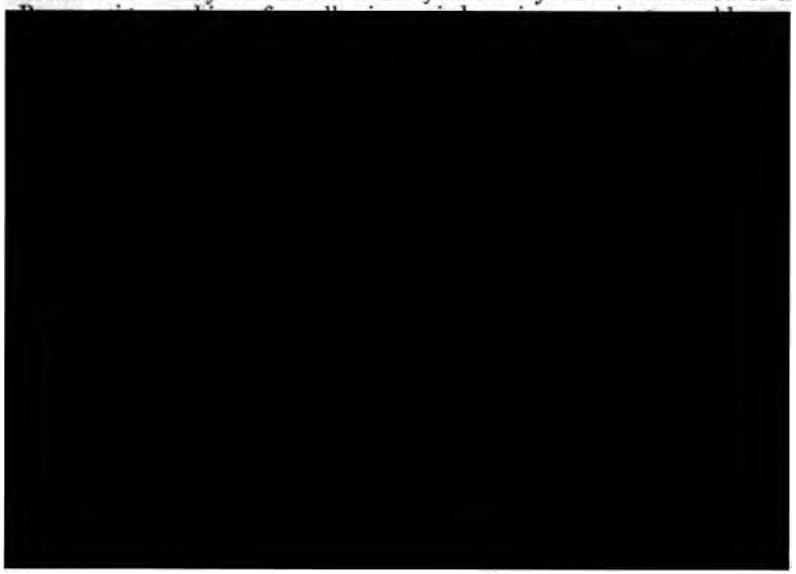
By stat. 5 *G.* 3. *c.* 43. § 20. If the officer shall have cause pect that candles are privately making in any place; or t candles are concealed with intent to avoid the duty; in suc on oath made by such officer before a commissioner [tw missioners, 23 *G.* 2. *c.* 21. § 34.] or one justice residing nea place, setting forth the ground of his suspicion, such comm or justice may, if he shall judge it reasonable, by special authorise such officer, by day or night (but if in the night sence of a constable), to enter into every such place so sus and to seize and carry away as forfeited all such candle shall there find so privately making, together with all m then ready or preparing for making the same, and also candles as he shall find so concealed, together with the b other package containing the same. And the person that found privately making such candles, or in whose possess such shall be found, shall forfeit 100*l*. unless he shall pro ment of the duty.

23 G. 2. c. 21. By stat. 23 *G.* 2. *c.* 21. § 34. If any person shall obstr such officer in searching any such suspected places, or in such candles, he shall forfeit 100*l*.

11 G. 1. c. 30. Further penalty of removing, mingling, or concealing.

By stat. 11 *G.* 1. *c.* 30. § 30. If any maker of candles f shall mingle candles which have not been weighed by the with those which have; or shall fraudulently remove any weighing; or conceal any candles or materials; he shall 100*l*.

25 G. 3. c. 74. By stat. 25 *G.* 3. *c.* 74. § 31. If any officer shall discover t



and belief; and said entries and oaths, within the bills, to be made with and administered by such officer as the commissioners shall appoint at the general excise office, and elsewhere by the collectors or supervisors. 25 G. 3. c. 74.

But by stat. 8 *Ann.* c. 9. § 8. He shall not be obliged to go further than the next market-town for making such entry. 8 Ann. c. 9.

By stat. 25 *G.* 3. c. 74. § 28. The maker shall, in one week after such entry, clear off the duties, on pain of double duty; and no maker after such default in payment shall sell, deliver, or carry out any candles till he hath cleared off the duty, on pain of double value. 25 G. 3. c. 74. Duty to be cleared off.

And by stat. 11 *G.* 1. c. 30. § 29. If there shall be found in the possession of any maker of candles for sale any candles not mentioned in the entry made by him, and of which the officer hath not had an account, and the duties have not been charged and paid, he shall be chargeable with the duties; and if he do not pay the same, he shall be liable to double duty, unless he shall prove that the duty hath been paid, or that he bought the same of some other chandler who had paid the duty, and that he gave six hours' notice in writing to the surveying officer, or at the next excise office, of his intention to buy the same, and of whom. 11 G. 1. c. 30. Candles not entered, nor duty paid.

And by stat. 26 *G.* 3. c. 77. § 10, 11. If any person shall knowingly receive, buy, or have in his possession any candles after the same shall be removed from the place where they were made, and ought to have been charged with the duty, before the said duty hath been charged (except such as have been condemned as forfeited), whether he claim any property or interest therein or not, he shall forfeit the same, and treble the value thereof, to be estimated at the best price the like sorts shall then bear in *London*. 26 G. 3. c. 77. Persons having candles in their possession not charged with the duty.

By stat. 8 *Ann.* c. 9. § 18. No person shall expose to sale any candles, unless in his public shop or warehouse, public fair or market, on pain of 5*l*. 8 Ann. c. 9. Candles, where to be sold.

By stat. 23 *G.* 2. c. 21. § 29. (*a*) Cocquets granted for shipping candles to be landed in any other part of the kingdom shall express the quality, quantity, and weight, the mark of the package, and by whom made and sold, and where consigned; and if they shall be shipped without such cocquet, they shall be forfeited and seized, together with the package. 23 G. 2. c. 21. Candles carried coastwise.

§ 27. No candles shall be imported, otherwise than in some package containing at least 224lbs. neat of candles, and stowed openly in the hold; on pain of being seized and forfeited, together with the package; and the master of the vessel shall forfeit 50*l*. See 42 *G.* 3. c. 93. § 19. Exportation and importation.

But by stat. 26 *G.* 2. c. 32. § 8. On information brought against such master, he may detain the wages of the mariners till it be determined; and if it shall appear that the candles were put on board by any mariner without the master's knowledge, the master may apply such mariner's wages in payment of the forfeiture. 26 G. 2. c. 32.

By stat. 42 *G.* 3. c. 9. § 19. No candles imported otherwise than according to 23 *G.* 2. c. 21. § 27. shall be entered for exportation, on pain of forfeiture of the same. 42 G. 3. c. 9.

(*a*) The provisions of 23 *G.* 2. c. 21. respecting CANDLES, are the same as respecting SOAP and STARCH.

Candles for which the duty hath been paid may be exported, and the duty drawn back. 8 *Ann. c.* 9. § 24, 25, 26. — 43 *G.* 3. *c.* 69. *Sched.* (C).

23 G.2. c.21. Seizures.

By stat. 23 *G.* 2. *c.* 21. § 28. The officers of excise (in like manner as the officers of the customs) may go on board any vessel, and search for and seize all candles forfeited, together with the package; and they may likewise seize such as, before entry and payment of duties, shall be found unshipping or unshipped.

24 G.3. c.36.

And by stat. 24 *G.* 3. *sess.* 2. *c.* 36. § 7. All wax candles seized on importation or otherwise, and condemned for nonpayment of the duties, shall be broken or otherwise rendered unfit for use.

23 G.2. c.21.

By stat. 23 *G.* 2. *c.* 21. § 30. The officers of customs or excise may seize any candles, with the package, that shall be found in any vessel, cart, or other carriage, where they shall have good reason to believe that the same were made in some private workhouse, or clandestinely imported without payment of duty; or that the same have been exported and re-landed after re-payment of the duty; and if the party in whose possession the same shall be found shall not at the hearing of the information make it appear that the duty hath been paid or secured, he shall forfeit *5l.* for every 100lb. weight, and also the candles and package shall be forfeited.

§ 31. If any foreign candles shall be unshipped, with intention to be laid on land, before entry and payment of the duties, or shall be landed again after shipping for exportation upon debenture; the same, together with the package, vessels, boats, horses, and other carriages used in landing or conveying the same, shall be forfeited, and may be seized by any officer of the customs or excise; and the persons from whom the same shall be seized shall forfeit *5l.* for every hundred weight.

§ 32. If any person shall knowingly harbour or conceal any candles unlawfully imported, or re-landed after shipping for exportation upon debenture, or suffer the same, he shall, whether he claim any property therein or not, forfeit *50l.* for every 100lbs. weight, together with the candles and package.

§ 33. And where any such candles shall be seized as forfeited, and *no person shall claim the same* in twenty days, if it be within the limits of the chief office of excise in *London*, the officer who made the seizure may cause notice, signed by the solicitor of excise, to be affixed at the *Royal Exchange*, of the day and time of day for proceeding to trial and condemnation of the same, by the commissioners of excise; and if it be out of the said limits, then public notice shall be given by proclamation at the next market-town on the market-day next after the said twenty days, of the day and place when and where the justices will proceed to trial and condemnation thereof: And the judgment thereon shall not be liable to any appeal, or to be removed by *certiorari*.

Penalties how recovered.

§ 37. But where *any person shall claim the same*, then all informations for the condemnation of such seizures, or recovering such penalties (if within the limits of the chief office in *London*), shall be heard by the commissioners of excise or appeals, elsewhere by two neighbouring justices where the seizure was made or penalty incurred; who, on complaint within three months, may summon the party accused, and the witnesses on either side, and on appearance of the offender, or on proof of notice given to him, may proceed to examine the facts and witnesses upon oath, and to give judg-

ment as well for the penalty as for the condemnation of such candles, and the packages, boats, cattle, and carriages so seized, and to issue their warrant for the sale thereof, and for levying any pecuniary penalty upon the goods of such offender, which may be sold if not redeemed within fourteen days; and for want of sufficient distress, such offender may be imprisoned till satisfaction be made. 23 G.2. c.21.

§ 37. 40. If either party be not satisfied with the judgment of such justices, he may appeal to the next sessions, whose judgment therein shall be final; and shall not be removable by *certiorari*. Appeal.

§ 34. And all such penalties and forfeitures shall be applied, half to the king, and half to the seizer or prosecutor. Distribution of penalties.

§ 38. Provided that any such penalties and forfeitures may be mitigated, so as not to reduce the same to less than one fourth over and above the costs. Mitigation.

§ 35. Where candles shall be seized for nonpayment of duties, or non-entry, and it shall be disputed whether such payment or entry was made or not, the proof shall lie on the claimer, and not on the officer. Proof lies on the owner.

By stat. 24 *G.* 3. *sess.* 2. *c.* 11. § 8. If any maker of candles shall obstruct any officer in the execution of the powers given to him by this or any other act, for securing the duties on candles, he shall for every such offence forfeit 100*l*. 24 G.3. c.11. Obstructing officers.

By stat. 8 *Ann. c.* 9. § 11. Every maker shall keep just scales and weights where he makes his candles, and shall permit and assist the officer to make use thereof, on pain of 10*l*. 8 Ann. c.9. Scales and weights.

By stat. 10 *G.* 3. *c.* 44. If he shall make use of insufficient scales or weights, he shall forfeit 100*l*. But not to be prosecuted both on this and the former act. [And by stat. 28 *G.* 3. *c.* 37. § 15. the same shall be forfeited, and may be seized by any officer of excise.] 10 G.3. c.44.

By stat. 26 *G.* 3. *c.* 77. § 8. If he shall, in weighing his stock, put any other substance therein, whereby such officer may be hindered from taking a just account of such stock, or shall forcibly obstruct or by any contrivance prevent or impede such officer, he shall forfeit 100*l*. 26 G.3. c.77. Cheating or obstructing the officer in weighing.

By stat. 8 *Ann. c.* 9. § 28. — 11 *G.* 1. *c.* 30. § 29. — 24 *G.* 2. *c.* 40. § 39. — 25 *G.* 3. *c.* 74. § 32, 33. All the fines, forfeitures, and penalties may be recovered and mitigated as by the laws of excise, or in the courts at *Westminster*; and distributed, half to the king and half to him that shall inform or sue. Power of the justices.

By stat. 8 *Ann. c.* 9. § 19. and 28 *G.* 3. *c.* 37. § 21. All candles, materials, and utensils for making candles, in custody of any maker of candles, or person in trust for him, shall be chargeable with all duties in arrear, and subject to all penalties and forfeitures, in the same manner as if the debtor or offender were the lawful owner. 8 Ann. c.9. 28 G.3. c.37. Utensils liable to the duties and penalties.

§ III. (5.) Coffee, Tea, Chocolate, and Cocoa-nuts.

[10 G.1. c.10. — 11 G.1. c.30. — 12 G.1. c.28. — 4 G.2. c.14. — 9 G.2. c.35. — 18 G.2. c.26. — 5 G.3. c.43. — 12 G.3. c.46. — 17 G.3. c.29. — 21 G.3. c.55. — 22 G.3. c.68. — 35 G.3. c.118. — 41 G.3. *U.K.* c.91. — 42 G.3. c.29. — 49 G.3. c.80. — 53 G.3. c.88. — 58 G.3. c.76. — 59 G.3. c.53. — 6 G.4. c.81. — c.111. — c.118. — 7 G.4. c.48. — 9 G.4. c.44.]

6 G.4. c.111. Customs.

By stat. 6 *G.* 4. *c.* 111. All former duties of customs were repealed, and new duties imposed. See also 7 *G.* 4. *c.* 48.

59 G.3. c.53. Excise duties.

By stat. 59 *G.* 3. *c.* 53. New duties of excise were imposed upon tea, coffee, and cocoa-nuts, and all former duties determined, except arrears, &c.

§ 16. After reciting that all the duties payable upon tea, coffee, and cocoa-nuts are by this act made wholly *excise* duties, enacts that all powers, regulations, &c. contained in any act relating to tea, coffee, and cocoa-nuts, &c. or to the importation, warehousing, removing, &c. thereof, and heretofore exercised by the commissioners and officers of customs, shall in future be executed by the commissioners and officers of excise; and all fines, penalties, &c. imposed by former acts are extended to this.

The duties upon tea to be paid by the purchaser to the company, and by the company to the commissioners of excise.

4 G.2. c.14. Cocoa nut-shells without the nuts.

By stat. 4 *G.* 2. *c.* 14. § 12. If any person shall import any cocoa nut-shells, or husks without the nuts, the officers of the customs, excise, or inland duties may seize them, with the bags, boxes, and other package; and after condemnation they shall be destroyed, or otherwise disposed of, as any three respective commissioners shall appoint; and they may reward such officer in any sum not exceeding 20*s.* per cwt.

11 G.1. c.30. Excise officers may go on board and search.

By stat. 11 *G.* 1. *c.* 30. § 1. The excise officers may go on board any ships, and search as the officers of the customs may do, for coffee, tea, cocoa-nuts, chocolate, and cocoa paste, and seize all such as shall be forfeited, or shall be unshipping, or unshipped, to be laid on land, without entry and payment of duties, with the boxes, bags, or other package.

9 G.2. c.35. Ships hovering near the coast, with tea on board.

By stat. 9 *G.* 2. *c.* 35. § 22. Where any vessel coming from foreign parts, and having six pounds or more of tea on board, shall be found at anchor, or hovering within the limits of any port, or within two leagues of the shore, or shall be discovered to have been within the limits of any port, and not proceeding on her voyage, wind and weather permitting, unless in case of unavoidable necessity and distress of weather, of which the person in charge of such vessel shall give notice, and make proof before the chief officer of customs, immediately after arrival in the said port, with coffee on board; all such tea, with the chests and other packages, or the value thereof, shall be forfeited (whether bulk shall have been broken or not), and the same may be seized and prosecuted, or the value thereof sued for by the officers.

5 G.3. c.43.

And by stat. 5 *G.* 3. *c.* 43. § 38. Where any vessel coming from foreign parts, and having on board 20lbs. of coffee, shall be found at anchor, or hovering within two leagues of the shore; or shall be discovered to have been within the limits of any port, and not proceeding on her voyage, wind and weather permitting (notice, as in the 9 *G.* 2. *c.* 35. § 22. *ante*); all such coffee, together with the package, or the value thereof, shall be forfeited, whether bulk shall have been broken or not; and the vessel also with her tackle and furniture shall be forfeited, provided such vessel doth not exceed the burden of 50 tons; to be disposed of according to 5 *G.* 3. *c.* 43.

10 G.1. c.10.

By stat. 10 *G.* 1. *c.* 10. § 27. If any person shall import any coffee, tea, or cocoa-nuts, which ought to be secured in warehouses, and shall not make due entries thereof, and bring the same into such

warehouse, the same shall be adjudged to be clandestinely run and unlawfully imported, and may be seized by any officer of customs or inland duties, and shall be forfeited, with the packages thereof, and the horses, carts, and other carriages made use of in carrying the same. 10 G.1. c.10.

By stat. 58 *G.* 3. *c.* 76. § 3. If any person shall import, unship, or land in *G. B.*, or within the limits of any of the ports thereof, any tea, and shall not make due entries thereof, so that the duties of customs and excise be secured and paid, all such tea so imported shall be deemed and is hereby adjudged to be clandestinely run, and shall be forfeited, and may be seized by any officer of customs or excise; and the person so offending, or aiding or assisting therein, or removing, receiving, harbouring, or concealing any run tea, shall, for each and every such offence, severally forfeit and lose the sum of 10*l.* for every pound weight thereof, or the sum of 100*l.* at the election of the attorney-general, or the person who shall sue or prosecute for the same; and no such penalty shall be mitigated by any justice or justices below one fourth part thereof. 58 G.3. c.76. Tea unshipped in G.B. without due entry, shall be forfeited, and the offenders shall forfeit 10*l.* for every lb. of tea, or 100*l.* at election of prosecutor.

By stat. 11 *G.*1. *c.*30. § 4. Every person who shall keep a public-house, shop, cellar, or other warehouse for selling brandy or other spirituous liquors, and shall have in his custody for his use any coffee, tea, chocolate, or cocoa-nuts, above six pounds weight, of any kind, shall be deemed a dealer in the said commodities. 11 G.1. c.30. Who shall be a dealer in coffee, tea, and chocolate.

By stat. 21 *G.* 3. *c.55.* § 29. If the officer of excise shall find any increase of the stock of any dealer over and above what the officer found in his last survey, such increase shall be deemed to be made by a commodity for which no duty has been paid; and so much of the said stock as shall be found increased shall be forfeited, and taken by the officer of excise discovering the same, and the person in whose stock the increase shall be found shall also forfeit 20*l.* 21 G.3. c.55. Dealer fraudulently increasing his stock.

By stat. 12 *G.* 3. *c.* 46. § 5. No tea above the quantity of six pounds weight shall be removed from any part of this kingdom, by land or water, without such a permit, expressing also the quality, whether black or green, on pain of forfeiting the tea, together with the package in which contained. 12 G.3. c.46. Above 6lbs. of tea not to be removed without a permit.

By stat. 21 *G.* 3. *c.* 55. § 26. If any tea, exceeding six pounds weight, shall be found removing from one part of this kingdom to another, unless at such times as hereinafter mentioned, *viz.* from 29th *September* to 25th *March*, between seven in the morning and five in the evening; and from 25th *March* to 29th *September*, between five in the morning and seven in the evening (except the same is removing by a known common stage-coach, waggon, or other carriage, which usually travel out of those hours), the said tea, and the package containing the same, whether accompanied with or without a permit, and all cattle and carriages made use of in removing the same, shall be forfeited, and may be seized by any officer for the inland duties upon tea. 21 G.3. c.55. Tea to be only removed at certain hours.

By stat. 21 *G.* 3. *c.* 55. § 24. If any dealer having received any tea into his stock, shall, within twenty-four hours after 'such receipt, see cause to return the same, he shall give twelve hours' notice to the officer of excise, expressing the cause of return; and the officer shall attend; and after he shall have examined the tea, and taken an account thereof, the dealer shall immediately, in his presence, repack it, and in *half an hour* after his arrival, 21 G.3. c.55. Dealer returning tea.

21 G. 3. c. 55. the officer shall grant a permit for returning the same; and if th dealer shall return the same without a permit, or be guilty of an any fraud relating thereto, he shall forfeit 100*l.*

Officers may take samples.

§ 25. When any dealer in tea shall have taken out a permit f removing tea from his own stock to the stock of any other li dealer, the officer may take a sample (not exceeding two ounc nor less than one, to be sealed by the trader in the presence the officer,) out of each parcel so intended to be removed, payi for the same according to the price that such tea is then co monly sold for: and if such dealer shall refuse to permit the officer to take such sample, or shall deliver a sample not being the very tea so to be sent away, he shall forfeit 20*l.*

22 G. 3. c. 68. By stat. 22 *G.* 3. *c.* 68. § 21. 24. No tea whatever shall be removed from any part of this kingdom, not being within the limits of the weekly bills of mortality, or of the chief office of excise in *London*, to any place within the said limits, on pain of forfeiting the tea, together with the packages containing the same, and the vessels and boats, horses, and other cattle, and carriages employed in removing the same, which may be seized by any officer of excise. But nothing herein shall prevent dealers in tea, who shall have received any tea accompanied with an authentic permit, from returning the same, for the cause and in the manner directed by 21 *G.* 3. *c.* 55. § 24.

6 G. 4. c. 81. **Licences.** By stat. 6 *G.* 4. *c.* 81. § 1. All former duties on excise licences are repealed. And by § 2. new duties are imposed, *viz.* (*int. al.*) on every person trading in or selling coffee, tea, cocoa-nuts, chocolate, or pepper, the annual sum of 11*s.*

Note. And *note*, the several general regulations respecting the duties, fines, licences, &c. &c. contained in this stat. are cited at length in the preceding article, **Ale and Beer.**

10 G. 1. c. 10. **Houses of manufacturing and** By stat. 10 *G.* 1. *c.* 10. § 10. Every druggist, grocer, chandler, coffee-house keeper, chocolate-house keeper, and other person dealing in coffee, tea, or cocoa-nuts, or making or selling choco-



00*l.*; and if any dealer shall knowingly buy or sell any so d, he shall forfeit 100*l.* 11 G. 1. c. 30.

' stat. 10 *G.* 1. *c.* 10. § 31. The commissioners for inland du- nay appoint houses for roasting coffee-berries, and officers to d them, and one or more persons at each house well skilled ısting coffee; to which all persons may resort to have their -berries roasted, bringing a certificate from an officer that luties have been paid, or that it hath been condemned rfeited; for the roasting of which coffee shall be paid 8*s.* wt. 10 G. 1. c. 10. Roasting houses.

2. But the sellers and dealers may send their own roasters, shall be permitted to roast the same therein, paying 3*s.* wt.

3. And, during the continuance of such roasting-houses, no -berries shall be roasted, burned, or dried, but in some one ıouse, on pain of forfeiting the same, and 5*s.* a pound.

4. If any officer or roaster duly appointed shall neglect or to attend such house, he shall forfeit 10*l.* for the first of- and 20*l.* for the second, and be incapable to hold any office revenue.

by stat. 49 *G.* 3. *c.* 80. (reciting stat. 10 *G.* 1. *c.* 10.) It is ed, that after the passing of this act all sellers of and dealers fee shall be at liberty to roast their own coffee, according to llowing regulations; *viz.* every such seller, being desirous to coffee, shall, before he shall roast any coffee, make true entry ting, at the next office of excise, of one or more rooms for urpose, which rooms respectively shall either be adjoining or ır as possible to the places by him entered and made use of eping raw coffee; and if any seller, &c. shall roast in any whereof he shall not have made such entry, he shall, for such offence, forfeit 50*l.*, together with all the coffee which at any time be found in any such place whereof no such shall be made: Provided, that no seller, &c. who shall at any eceive into his custody or possession any unroasted coffee, ı quantity than 56lbs., except coffee returned to him by any ner for being disliked, shall be at liberty to roast, or put in ion of roasting, any coffee; and if any seller, &c. shall, con- o this act, roast, or put in operation of roasting, any coffee, ll, for each offence, forfeit 50*l.* together with all such coffee ı so roasted, &c. 49 G. 3. c. 80. Dealers in coffee may roast their own coffee on making entry at the next office of excise. Penalty for not making entry, 50*l.* Dealers receiving into their custody unroasted coffee, in less quantity than 56lbs. shall not be permitted to roast coffee.

l by stat. 43 *G.* 3. *c.* 129. § 5. (repealing § 3. of 41 *G.* 3. *U. K.* which respected imitations of coffee,) if any burnt, scorched, ısted peas, beans, or other grain or vegetable substance, red for the purpose of being an imitation of, or in any t to resemble coffee or cocoa, or to serve as a substitute e same, or pretended by the possessor or vender thereof be, shall be made or kept for sale, or offered or ex- to sale, or found in the possession of any dealer in or of coffee or cocoa, or of [*query*, if?] any burnt, scorched, sted peas, beans, or other grain or vegetable substance, not coffee or cocoa, shall be called by the preparer, possessor, der thereof by the name of *English* or *British* coffee, or any ıame of coffee, or by the name of *American* cocoa, or *English tish* cocoa, or any other name of cocoa, the same shall be ed, together with the packages, and shall be seized by any Penalty 50*l.* 43 G. 3. c. 129. If any article made to resemble coffee, or cocoa, be found in the possession of any dealer, or called by him English or British coffee, &c. it shall be forfeited, and the dealer forfeit 100*l.*

43 G.3. c.129.

excise officer; and the person preparing or selling the same, or having the same in his possession, or the dealer in or seller of coffee or cocoa in whose custody the same shall be found, shall forfeit 100*l.*

3 G.4. c.53. 43 G.3. c.129. Persons not being dealers in coffee may roast and sell corn, peas, beans, or parsnips.

By stat. 3 *G.* 4. *c.* 53. § 1. after reciting stat. 43 *G.* 3. *c.* 129. § 5 it is enacted, that it shall be lawful for any person, not being dealer in or seller of coffee or cocoa, to manufacture, deal in, and sell scorched or roasted corn, peas, beans, or parsnips, whole and not ground, crushed, or powdered, under the licence and subject to the regulations and restrictions therein-before mentioned.

Entry to be made of premises, and roasted corn to be sold whole, and in packages.

§ 6. Before any person shall begin to manufacture for sale or deal in, or sell any such scorched or roasted corn, peas, beans or parsnips, he shall make a true and particular entry in writing, according to the laws in respect to excise entries of places, of every house, room, and place, and of every utensil by him made use of, or intended to be made use of, in or for the scorching or roasting, or keeping of scorched or roasted corn, peas, beans, or parsnips for sale, at the office of excise, within the limits whereof such house, room, or place shall be situate, and shall be subject to the survey of the officers of excise, in like manner as coffee-dealers; and every such person shall, as soon as any such corn, peas, beans, or parsnips has or have been scorched or roasted, put and make up the same whole, and not ground, crushed, or powdered, and unmixed with any other article or ingredient whatsoever, in packages, and stamp or mark the cover of every such package with the words, "*roasted corn, peas, beans, or parsnips,*" as the case may be, and with his name and place of residence;

Penalty for selling roasted corn under any other name, 50*l.*, &c.

and shall not have or keep, or sell or offer to sell or deliver, any scorched or roasted corn, peas, beans, or parsnips under any other name or description whatever than scorched or roasted corn, peas, beans, or parsnips, as the case may be, or in any other state or condition than whole, and not ground, crushed, or powdered, or mixed with any other article or ingredient, or otherwise than so made up into such packages so marked, on pain of forfeiting for

[redacted]

9 G.4. c.53.

other mixtures of cocoa.

ations of cocoa, with sugar and arrow-root flour, or other farinaceous powder, such arrow-root flour or other farinaceous powder not being baked, scorched, roasted, or altered from its natural state, except by being mixed with cocoa as aforesaid, and to sell such cocoa-paste, broma, or other mixture: Provided (*a*) that every such person shall enclose all such cocoa-paste, broma, and other such mixtures and preparations of cocoa, as soon as the same is made, and before the same is sold, offered, or exposed for sale or delivered, in paper sealed and stamped, or in some pot or other vessel, to which a stamp shall be affixed in such manner as the commissioners of excise shall direct, and which stamp the commissioners of excise shall furnish and cause to be delivered to every such person upon his request; and upon such person paying to such commissioners for such stamps so to be used, *sixpence* for every stamp to be attached to a pound weight, and *three-pence* for every stamp to be attached to half a pound weight, and *three half pence* for every stamp to be attached to every quarter of a pound weight of all such cocoa-paste, broma, or other mixtures as herein described; and if any person shall make or manufacture any cocoa-paste, broma, or other mixture or preparation of cocoa as aforesaid, without first making such entry, or shall mix with any cocoa any baked, scorched, or roasted material whatsoever, or any ingredient whatsoever, except as aforesaid, or shall keep, offer for sale, sell, or deliver any such preparation of cocoa, otherwise than in the manner and inclosed in the paper or pot, containing not less than one quarter of a pound, or more than one pound, stamped as aforesaid, or shall use any such stamp or paper a second time, or imitate or use any stamp for the purpose aforesaid, which shall not have been issued by or by the order of the commissioners of excise, or shall use any art or contrivance by which the officer surveying such premises shall be prevented or deceived in taking a true account of all such compound cocoa, broma, or other mixture of cocoa with sugar and arrow-root flour, or other unbaked, unscorched, unroasted, and undisguised farinaceous powder as aforesaid, or shall obstruct or hinder such officer in taking such account, every such person and persons in such cases respectively offending, shall, for every such offence, severally forfeit the sum of 100*l.*

Cocoa paste, &c. to be put up in paper or put in a pot, and a stamp to be affixed:

6*d.* stamp to a lb. — 3*d.* for a ½ lb. — and 1½*d.* for ¼ lb.

Penalty for not conforming to the directions herein given, 100*l.*

11 G. 1. c.30. Saving for former excise laws.

By stat. 11 *G.* 1. *c.* 30. § 5. No dealer in tea, or manufacturer or dyer thereof, or pretending so to be, shall counterfeit or adulterate it, or alter or manufacture it with any drug, or mix it with any leaf or other ingredient, on pain of forfeiting the same and 100*l.*

True manufacturing of tea. 41 G.3. c.91.

By stat. 41 *G.* 3. *c.* 91. § 4. If any commodity shall be seized as manufactured in imitation of or to resemble coffee, or to serve as a substitute for coffee; or if any action shall be brought by the owner or claimer against any officer of excise, for any person acting in his assistance, for such seizure, the proof that the commodity so seized is not manufactured in imitation of or to resemble coffee, shall lie upon the owner or claimer, by the oaths of two credible witnesses.

4 G.2. c.14. Imitations of tea.

By stat. 4 *G.* 2. *c.* 14. § 11. If any dealer in or seller of tea shall dye or manufacture any sloe-leaves, liquorice-leaves, or the leaves

(*a*) By stat. 6 *G.*4. *c.*118. § 7. So much of this proviso as requires the stamps to be affixed is repealed.

G. 2. c. 14.

of tea that have been used, or the leaves of any other tree, shrub, or plant, in imitation of tea, or shall mix, colour, or stain, with *terra japonica*, sugar, molasses, clay, logwood, or any other ingredients; or shall sell, or offer to sale, or have in his custody, any such leaves in imitation of tea, or any such stained leaves, or tea mixed with any other ingredient, he shall forfeit for every pound weight thereof 10*l.*

7 G. 3. c. 29. Dyeing or manufacturing in imitation of tea, any leaves of tea that have been used, &c. or selling or offering to sell the same, &c.

By stat. 17 *G.* 3. *c.* 29. § 1. If any person, whether he be a dealer in or seller of tea or not, shall dye or manufacture any sloe-leaves, liquorice-leaves, or the leaves of tea that have been used, or the leaves of any ash, elder, or other tree, shrub, or plant, in imitation of tea, or shall mix or colour any such leaves with *terra japonica*, copperas, sugar, molasses, clay, logwood, or any other ingredients, or shall sell or offer to sale, or have in his custody, any such leaves dyed or manufactured, or dyeing or manufacturing, in imitation of tea, and shall be thereof convicted upon the oath of one witness, before one justice, he shall, for every pound of such leaves so dyed or manufactured, or dyeing or manufacturing, in imitation of tea, and for every pound of such mixed, stained, or dyed leaves of tea, forfeit 5*l.*; and on nonpayment thereof such justice shall commit him to the common gaol, for any time not exceeding twelve months, nor less than six, or until the penalty and charges shall be paid.

Penalty.

Having more than six pounds of such leaves in possession. Exception.

§ 2. If any person shall have in his custody any quantity (exceeding 6 lbs. weight) of sloe-leaves, or the leaves of ash, elder, or any other tree, shrub, or plant, green or manufactured, and shall not prove, to the satisfaction of the justice before whom the matter shall be heard, that such leaves were gathered with the consent of the owner of the trees, shrubs, or plants from which the leaves were taken, and that such leaves were gathered for some other use, and not for the purpose of manufacturing them in imitation of tea, and shall be convicted thereof by the oath of one witness, before one justice, he shall, for every pound of such green or manufactured leaves so found in his custody, forfeit the sum of 5*l.*; and

Penalty.



And if any person shall obstruct such officer, he shall forfeit 50*l.* on conviction, by the oath of one witness, before one justice; and on nonpayment, the justice shall commit him to the common gaol for any time not exceeding twelve months, nor less than six, or until the penalty and charges shall be paid. 17 G. 3. c. 29. Obstructing officers in search, &c. Penalty.

§ 4. Provided that no such green and unmanufactured leaves shall be burned or otherwise destroyed, if the owner thereof shall, within 24 hours after seizure, prove, to the satisfaction of the justice, that the said leaves were gathered with consent of the owner of the trees, shrubs, or plants, and that they were gathered for some other use, and not for the purpose of dyeing or manufacturing them in imitation of tea, in which case the said leaves, carriages, and package shall, by order of such justice, be restored. Certain cases in which leaves found concealed not destroyed, &c.

§ 5. And all such leaves shall be deemed in the custody of the occupier of the house or place where the same shall be found; and such occupier shall be liable to all the penalties by this act inflicted on persons having such leaves in their possession, if it be proved, to the satisfaction of the justice, that such leaves were lodged there with the privity or consent of the said occupier. In what case occupiers of houses, &c. wherein leaves found, liable to penalties.

§ 6, 7. The said forfeitures shall be distributed one half to the informer, and the other half to the poor of the parish or place where the offence shall be committed; in which case, nevertheless, an inhabitant of the parish where the offence shall be committed may be a witness. Application of forfeitures. Parishioners to be evidence.

§ 9. The conviction shall be written on parchment or paper in this or the like form. *Be it remembered, that on the ——— day of ———, in the ——— year ———*, A. O. *was upon complaint of* A. I. *convicted before me, one of the justices of the peace for ———, in pursuance of an act passed in the seventeenth year of the reign of his majesty King* George *the third, for* [here set forth the offence]. *Given under my hand and seal the day and year above written:* which conviction shall be certified by the justice to the next sessions; and shall not be quashed for want of form, nor removed by *certiorari* into H. M.'s court of K. B. Conviction certified to quarter sessions.

As to the true manufacturing, stamping, tying up of chocolate in proper quantities, and as to making it for private families from not less than half a cwt. of cocoa-nuts at one time, see stats. 9 *G.* 1. *c.* 10. § 17, 18. 22—25. 11 *G.* 1. *c.* 30. § 13. 32 *G.* 2. *c.* 10. § 16, 17. 27 *G.* 3. *c.* 13. § 35. *c.* 31. § 26. True manufacturing, stamping, tying up, &c. of chocolate, and making it for private use.

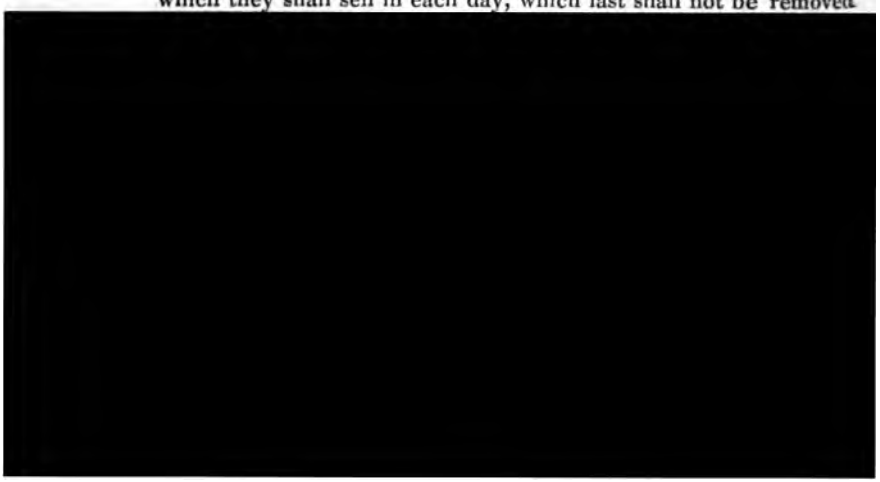
By stat. 9 *G.* 2. *c.* 35. § 30. If any person shall offer any tea to sale, not having a permit; or if any hawker, pedlar, petty chapman, or other trading person, going from town to town or other men's houses, and trading either on foot or with any horse or other cattle or otherwise, shall offer any such tea to sale, although he have a permit, the person to whom it is offered to sale may seize and detain the same, and carry it to the next warehouse belonging to the customs or excise, and bring the person before a justice of the peace, to be by him committed to prison, and prosecuted for the penalties incurred for such offence; and such tea may be prosecuted in the name of the person who stopped or seized the same, in like manner as if it had been seized by an officer: and after condemnation and commitment, the person seizing shall have one third of the gross produce by sale; and if he desire it, the commissioners shall in the mean time, till the goods 9 G. 2. c. 35. Penalty of retailing tea without a permit, or pedlars with one.

9 G. 2. c. 35. can be publicly sold, cause 1*s.* for every pound of tea, &c. to be advanced to such person, upon certificate of the justice of the commitment.

10 G. 1. c. 10. Permit on removal. By stat. 10 *G.* 1. *c.* 10. § 16. No coffee (*a*), tea, cocoa-nuts, or chocolate, above 6 lbs. weight, shall be removed from any part of the kingdom without a permit signed by an officer, signifying the names and places of abode of the buyer and seller, and the quantity and species of the goods, and that the inland duty hath been paid, or the cocoa-nuts entered as aforesaid, or that they have been condemned as forfeited, on pain of forfeiting the same, together with the canisters, bags, or other package; which permit shall be left with the officer of the division to which the same shall be carried, to prevent the seizure thereof; in which permit shall be expressed the time for which it shall continue in force.

11 G. 1. c. 30. By stat. 11 *G.* 1. *c.* 30. § 10. If any person shall take out a permit for removing coffee (*a*), tea, or cocoa-nuts, and shall not send away the goods within the time limited, nor return the permit, he shall forfeit treble value; and if there shall not appear a sufficient decrease made in the stock to answer the quantity in the permit, the officer may seize so much of the said stock as forfeited as will answer the said quantity in the permit; but no person shall receive a permit without the direction in writing of the person (or his servant) from whose stock the goods are to be removed, on pain of 50*l.*; and in default of payment he shall be imprisoned three months.

10 G. 1. c. 10. Account to be kept of small quantities consumed. By stat. 10 *G.* 1. *c.* 10. § 35. All sellers and dealers in any of the said goods, and all makers of chocolate and coffee, or chocolate-house keepers, who shall consume the same in small quantities under 6 lbs., shall keep an account of all coffee, tea, chocolate, and cocoa-nuts which they shall consume in each day; and every night enter in a book an account of the gross quantities retailed by them in that day in small quantities, under 6 lbs.; and shall keep another book wherein they shall enter each parcel above 6 lbs. which they shall sell in each day, which last shall not be removed



declaration the truth of the entries made in any such book, or to subscribe such declaration, or shall make or subscribe a false declaration, he shall forfeit 100*l.* 53 G.3. c.88.

§ 2. Every seller of and dealer in coffee, tea, cocoa-nuts, or chocolate shall, on demand of the officer of excise under whose survey he shall then be, enter into the said books the quantities of the said commodities which he is by the act 10 *G.* 1. *c.* 10. § 35. required to enter therein, and shall immediately afterwards, if demanded by such officer, return such book to him; and the truth of the entries shall then be verified upon declaration as aforesaid, under the penalty of 100*l.* for every neglect or refusal. Dealer to make entries in books on being required by excise officer. Penalty.

But by stat. 12 *G.* 1. *c.* 28. § 29. No dealer in cocoa-nuts shall dispose of less than 28lbs. at a time, and then shall enter in writing the name and place of abode of the person to whom sold, and on demand shall produce such account to the officer, and permit him to take account of such name, &c.; on pain of 20*l.* for each pound of cocoa-nuts otherwise disposed of, and of 20*l.* for default about the entry. 12 G.1. c.28.

By stat. 12 *G.* 3. *c.* 46. § 4. Such dealers in and sellers of tea shall, in their accounts and books to be kept as aforesaid, distinguish particularly the respective quantities of each of the said sorts of black tea and green tea by them consumed, retailed, or sold on each day, on the like pain of 100*l.* as aforesaid. 12 G.3. c.46.

By stat. 10 *G.* 1. *c.* 10. § 39. If any such dealer in coffee, tea, or cocoa-nuts, or maker or seller of chocolate, shall conceal the same from the view of the officer with intent to defraud H. M., he shall forfeit the same, and treble the value thereof, and also all canisters and package containing the same. 10 G.1. c.10. Dealers concealing coffee, &c.

§ 40. If any person shall assault or hinder any officer of the customs or inland duties in seizing or securing any coffee, tea, cocoa-nuts, or chocolate; or shall by force rescue the same after seizure, or attempt so to do; or shall break or damage any vessel or package containing the same, he shall forfeit 50*l.* Obstructing officers, or rescuing coffee, &c.

And by stat. 35 *G.* 3. *c.* 118. § 22. If any person shall obstruct any officer in the execution of his duty, or shall rescue any coffee or cocoa-nuts which have been seized, or attempt so to do, where no penalty is particularly provided, he shall forfeit 100*l.* 35 G.3. c.118.

And by stat. 59 *G.* 3. *c.* 53. § 26. If any person shall molest, disturb, hinder, oppose, or impede any officer of excise in the due execution of the powers and authorities by this act granted, except in cases for which other penalties are provided, every person so offending shall forfeit the sum of 200*l.* 59 G.3. c.53. Penalty for obstructing officers, in cases not otherwise provided for.

By stat. 10 *G.* 1. *c.* 10. § 28. On disputes whether the duties have been paid, the proof shall lie on the claimer, and not on the officer. Proof to lie on the claimer.

By stat. 9 *G.* 4. *c.* 44. § 1. All acts relating to the revenue of excise in force at and immediately before 1825, with respect to dealers in and sellers of coffee, cocoa, pepper, &c. are continued in force. 9 G.4. c.44.

By § 2. All penalties and forfeitures prosecuted by order of the commissioners of excise shall be prosecuted and recovered according to 8 *G.* 4. *c.* 53. Penalties.

§ 3. No tea shall be removed from *G. B.* to *Ireland*, nor be delivered out of any warehouse in *G. B.* to be sent to *Ireland*, until the full duty of excise be paid. Tea removed to Ireland.

G.4. c.44. English acts extended to U.K.

§ 4. All acts in force in *England* relative to the revenue of excise on tea, coffee, cocoa, pepper, &c. are extended to the U. K.

§ III. (6.) Cider, Perry, Rum, Metheglin, and Mead.

[12 C. 2. c. 24. — 12 & 13 W. & M. c. 11. — 7 & 8 W. 3. c. 19.— c. 30. — 3 G. 3. c. 1.—c. 14. — 6 G. 4. c. 37.—c. 81.—c. 111.— 7 & 8 G. 4. c. 53.]

5 G.4. c.37. Duties.

By stat. 6 *G.* 4. *c.* 37. All former *excise* duties and drawbacks upon cider and perry, mead and metheglin, are repealed, and new duties enacted, the whole being placed under the management of the commissioners of excise, and the duties assimilated throughout *G.B.* and *Ireland.*

These duties are now collected according to the general regulations and provisions of the stat. 7 & 8 *G.* 4. *c.* 53., *ante*, p. 60. *et seq.*

6 G.4. c.111.

By stat. 6 *G.* 4. *c.* 111. All former duties of customs were repealed, and new duties enacted. *Vide ante*, p. 58.

6 G.4. c.81. Licences.

By stat. 6 *G.* 4. *c.* 81. § 1. All former duties on excise licences are repealed; and by § 2. new duties are imposed; for which, as applying to persons selling cider or perry by retail, *vide ante*, title Ale and Beer, p. 120. *et seq.*

Note.

And note:— The several general regulations respecting the duties, fines, licences, &c. &c. contained in this statute, are cited at length in the same article.

3 G.3. c.1. Dealers in cider, &c. to make entry of their storehouses.

By stat. 3 *G.* 3. *c.* 1. § 25. Every dealer in and retailer of *cider* and *perry*, and other person receiving into his custody either of them for sale, and every person who shall buy any fruit to make into cider or perry for sale, shall make entry of his storehouses, cellars, and other places, at the excise-office within the district; on pain of *50l.*

6 G.3. c.14. Persons taking

And by stat. 6 *G.* 3. *c.* 14. § 9. Every factor or agent taking any cider or perry into his possession shall, three days before he shall

was made from fruit of his own growth, and not from bought fruit; or unless it shall appear by a certificate under the hand of the proper officer of excise, accompanying the said cider or perry, that the duties imposed by this and all former acts had been charged on the same. 6 G.4. c.14.

§ 11. Every person who shall buy any cider or perry, or any fruit to make into cider or perry, and shall sell any cider or perry so bought or made by the hogshead, or any greater or lesser measure; or in less quantities than 20 gallons at a time, whether the same be made from fruit of his own growth, or from bought fruit, shall be deemed a dealer in and retailer of cider or perry. Dealers and retailers of cider and perry.

§ 13. Every such dealer in and retailer of cider or perry made from fruit of his own growth shall be liable to all the regulations which any dealer in or retailer of cider or perry is liable to by this or any other act now in force for managing the duties on cider or perry.

§ 15. And to prevent frauds being committed by dealers and retailers or factors and agents in ordering quantities to be removed immediately from the maker to the persons to whom they are consigned by such dealers and retailers, factors and agents, without coming into the possession of such dealers, retailers, factors, or agents, whereby the duties are prevented from being charged, it is enacted, that if any such dealer, &c. shall cause such cider or perry so to be removed from the maker to the person contracting for or ordering the same, without the duties having been first charged, and without a certificate from the officer of excise (which he shall give without fee), signifying the quantity and number of casks or other package, and that the duties have been charged, he shall forfeit 50*l*. Cider not to be removed till the duties are charged.

§ 16. The said duties shall be drawn back on distillation into low wines and spirits; and if such cider or perry, having paid the duties, shall afterwards, by being unfit for sale as cider or perry, be charged with the duties on vinegar, three commissioners of excise, or two justices, on proof thereof, shall discharge the duties thereon imposed by this act. Drawbacks allowed.

By stat. 7 & 8 *W.* 3. *c.* 30. § 16. If any maker of cider, metheglin, or mead, for sale, shall conceal or convey away any cider, metheglin, or mead, from the view of the gauger, he shall forfeit for every hogshead of cider 40*s*., and so in proportion; for every gallon of metheglin or mead, 5*s*. 7 & 8 W. 3. c. 30. Concealing cider, metheglin, or mead.

§ 17. If any maker or retailer of the liquors aforesaid shall, on request or demand made by the gauger in the day-time, or if by night in the presence of a constable, refuse to permit him to enter his house, storehouse, or other place used by him, and to take account of the said liquors, he shall forfeit 15*l*. Penalty for refusing to have place searched.

By stat. 6 *G.* 3. *c.* 14. § 17. If any person shall obstruct the excise 6 G.3. c.14. Penalty for obstructing.

the ship ———, *of* ———, *the master of which ship is* R. C. *and bound from* ——— *aforesaid to* ———, *is cider, made from apples of the growth of him the said* C. P. *and that no bought fruit was mixed therewith. The said cider is consigned to* I. L. *esquire,* ———.

Sworn before me, at ———, *in the said county of* ———, *this* ——— *day of* ——— 18—. J. P.

T. A.

6 G.3. c.14. officer in execution of the powers of that act, in relation to the duties on cider and perry, he shall forfeit 40*l.*

8 & 9 W. c. 19. Delivering materials to distillers. By stat. 8 & 9 *W.* 3. *c.* 19. § 9. If any common brewer or maker of cider, making beer, ale, or cider for sale, shall deliver to any distiller or vinegar-maker any wash, tilts, ale, beer, vinegar-beer, or cider, without first giving notice to the gauger what quantity he intends to deliver, and when and to whom; he shall forfeit for every barrel 20*s.*

6 G.3. c.14. Carrying coastwise cider or perry. By stat. 6 *G.* 3. *c.* 14. § 8. The master of any vessel, in which shall be shipped any cider or perry to be carried coastwise, shall, within three days after his arrival at any port where any part thereof is to be delivered, give to the proper officer of excise there an account in writing of the whole quantity by him received on board, distinguishing therein the names and places of abode of the persons by whom the same was put on board, and at what place, and the names and places of abode of the persons to whom the same was directed or consigned, and where to be delivered; which, if he shall not do, or shall deliver any part thereof at sea, or in any other place than where it was consigned (unavoidable accidents excepted), he shall forfeit 20*l.*; and he shall, within twenty-one days after his arrival at the place of delivery, land all the cider and perry then on board to be delivered there, on pain of forfeiting all such as shall not be so landed, and the same may be seized by any officer of excise, together with the casks or other package.

12 C.2. c.24. Entry and payment of duties. By stat. 12 *C.* 2. *c.* 24. § 29, 30. Every maker or retailer of cider, perry, or metheglin shall, once in every month, make a true and particular entry, at the office of excise within the limits of which the commodities are made, of all the cider and perry made or retailed in that month, on pain of forfeiting for each omission 20*s.*

§ 31. Every such maker or retailer shall pay the duty within a month after he shall or ought to have made such entry, on pain of forfeiting double.

§ 32. No person shall be obliged to travel for making such entries or payments, if he live in a market-town, out of it, or if he



By stat. 6 *G.* 4. *c.* 117. The former *excise* duties and drawbacks on *flint*-glass were repealed, and other duties and another drawback enacted. 6 G.4. c.117.

By stat. 9 *G.* 4. *c.* 48. The excise duties and drawbacks on *late*-glass, *broad*-glass, *crown*-glass, *bottle*-glass, and glass-*bottles*, were repealed, and other duties and drawbacks enacted. 9 G.4. c.48.

These several duties of excise are now collected, and recoverable pursuant to the general regulations and provisions of the stat. 6 & 8 *G.* 4. *c.* 53., *ante*, p. 60. *et seq.*

By stat. 6 *G.* 4. *c.* 81. All former duties on excise licences are repealed; and by § 2. new duties are imposed; *viz.* (*int. al.*) upon every glass-maker, for each and every glasshouse, 20*l.* 6 G.4. c.81. Licences.

And note: — The several general regulations respecting the duties, penalties, licences, &c. &c. contained in this statute are cited at length under the preceding title, Ale and Beer. Note.

By stat. 17 *G.* 3. *c.* 39. § 25. If any foreign glass shall be landed or unshipped with intent to be put on shore, before entry and payment of the duties, or without a warrant from the proper officer, the same shall be forfeited, or the value thereof, and may be seized or recovered of the importer or proprietor by any officer of the customs or excise; and moreover the master or other person having command of the vessel, and every other person concerned in such landing or unshipping, shall forfeit 100*l.* 17 G.3. c.39.

By stat. 38 *G.* 3. *c.* 33. § 6. To prevent the fraudulent importation of glass, every package containing any plate or plates of glass unframed, being plate, crown, or sheet glass, which shall be imported, or which shall be brought into this kingdom for the purpose of exportation, shall be marked on the outside thereof in Roman letters, four inches long at least, with the word GLASS; on pain of forfeiture thereof, together with the package, and all goods or merchandise contained therein. 38 G.3. c.33.

§ 7. And the master of every vessel in which any such glass shall be imported shall, in the report of his ship's cargo, express every such package of glass; on pain of forfeiting the same, and also 100*l.*

§ 8. No such glass shall be imported in any package, which shall not contain 5 cwt. net, at least, on forfeiture thereof: Provided that this act shall not extend to forfeit any plate of glass 60 inches in length or upwards, on account of the package not being marked as aforesaid.

By stat. 17 *G.* 3. *c.* 39. § 27. — 35 *G.* 3. *c.* 114. § 1. (made perpetual by 39 & 40 *G.* 3. *c.* 45.) Every maker of glass shall, before he begins to make any glass, or mix or prepare any materials, make entry in writing at the next excise-office of all workhouses, furnaces, pots, pot-chambers, annealing-arches, warehouses, rooms, and other places by him intended to be used for the making or keeping of glass or pots, or materials mixed and prepared for making of glass; on pain of forfeiting 200*l.* for every workhouse, &c. 17 G.3. c.39. 35 G.3. c.114. Place of making to be entered.

By stat. 58 *G.* 3. *c.* 21. § 3. and 59 *G.* 3. *c.* 115. § 8. No person shall make, or keep, or erect, set up, enter, or use any house or place for making or keeping a certain glass called smalts, within one mile in a direct line from any place entered or used for making or keeping other glass; nor shall any person make, or keep, or erect, set up, enter, or use any house or place for making or keep- 58 G.3. c.21. 59 G.3. c.115.

58 G.3. c.21. 59 G.3. c.115. ing other glass, within one mile in a direct line from any place entered or used for making or keeping smalts; nor shall any maker of smalts make any other kind of glass, on pain of forfeiting 500*l.*; and all entries made contrary to this act shall be void.

45 G.3. c.30. Who shall be deemed makers of glass. By stat. 45 *G.* 3. *c.* 30. § 10. Every person who shall make or manufacture any sort or kind of glass, or glass wares, by melting any metal, materials, cullet, or old or broken glass, in any pot, crucible, or other utensil, shall be deemed a maker of glass, and subject to the provisions, rules, regulations, and penalties to which makers of glass are now liable.

54 G.3. c.97. By stat. 54 *G.* 3. *c.* 97. § 7. Every person who shall make or manufacture any kind or sort of glass ware, by melting or softening of glass, or who shall melt or soften glass in any manner whatsoever, for making the same into any vessel, ware, or piece of household furniture, or part of any vessel, &c. shall be deemed a maker of glass, and subject to the provisions, rules, regulations, and penalties to which makers of glass are now liable.

58 G.3. c.33. Drop-pinchers. By stat. 58 *G.* 3. *c.* 33. § 2. No person who shall carry on the business of a drop-pincher only, and not make any other kind of glass or glass wares, and shall use in such trade, lump, paste, or cane glass only, and duly make entry with the proper officer of excise of all workshops, rooms, and places where he shall carry on such trade, or keep materials for that purpose, and shall produce to the surveying officer all materials by him used, and deliver to such officer invoices for all lump, paste, or cane glass received into his custody, signed by the maker and seller of such glass, or his foreman or clerk, and the officer surveying the glasshouse where such glass was made, and shall not use any cullet or waste glass, and shall observe the regulations imposed in respect of such trade, except taking out a licence as a glass-maker, shall be liable to any penalty for carrying on such business without a licence: Provided, that all cullet or waste glass, and other materials which may be used in making glass or glass wares, found in the possession of any person carrying on such trade, except lump, paste, or cane glass

to the officer of the time and hour when he intends to
ith an account of the weight of the materials, and the spe-
glass to be made in each pot; on pain of 50*l.* And if the
e not begun pursuant to such notice, the said notice shall

er notice given, and a gauge taken by the officer, he shall
any pot any material or preparation, he shall forfeit 50*l.*
at. 35 *G.* 3. *c.* 114. § 4. No maker shall, after any pot has
t in the furnace, begin to fill the same with metal or pre-
is for the making of glass, until the officer shall have pre-
examined and gauged such pot, after the same has been set
e furnace as aforesaid; on pain of forfeiting 50*l.*

35 G.3. c.114. No pot to be filled till gauged.

And that the officer may be enabled without inconvenience
tain whether, after notice given, and a gauge taken, and
fresh notice in writing, any metal, material, or preparation
n put into any pot, no maker shall, during a quarter of an
er the officer shall have entered the glasshouse, and shall
rbidden the same, stir or break up the fire, or add fresh
fuel thereto, in any furnace or annealing arch; or wilfully
y smoke, or other noisome or offensive vapour, whereby
er may be hindered or obstructed in gauging or examining
, or in examining the metal or materials in such pot, or in
; or ascertaining the quantity, or in examining or count-
vessels, utensils, or wares in any annealing arch; on the
of 100*l.*

Fire not to be stirred, &c. to obstruct the officer.

And the officer may at all times unstop or take down any
from any pot, for the purpose of examining, gauging, or
an account of the materials in such pot.

Officers may unstop pots to gauge materials.

at. 47 *G.* 3. *sess.* 2. *c.* 30. § 16. reciting the 19 *G.* 2. *c.* 12. and
hod prescribed therein of taking an account of metal and
ls for making glass after being put into the pots, and re-
hat since that act it had been the invariable practice of the

47 G. 3. sess. 2. c.30.

47 G.3. sess.2. c.30.

fluid, metal, or materials in such pot, and deducting the quantity of metal or materials which this space denoted by such dry inches, or the unfilled and unoccupied part of such pot appeared, by such original gauge or calculation, capable of containing from the quantity of metal or materials which, according to such original gauge or calculation, the whole pot was denoted to be capable of containing; and reciting that doubts had arisen whether this method were warranted by law, enacted, that in such case the quantity should be deemed to be as by the recited method it is denoted to be, and the officer of excise shall make a report thereof in writing to the respective commissioners of excise, or those appointed by them to receive the same, and such report to be a charge upon such maker.

51 G.3. c.69. Glass-makers to make entry of the lears to be used by them.

By stat. 51 *G.*3. *c.*69. § 5. Every maker of glass, before he shall begin to anneal any glass or glass wares whatsoever, shall make particular entry in writing of every lear by him intended to be used for the annealing of glass, at the office of excise within the compass or limits whereof such lear shall be, on pain of 200*l.* for every such lear which he shall so use without having made such entry.

35 G.3. c.114. Makers of common glass bottles, &c. in distinct houses, to give a declaration thereof.

By stat. 35 *G.*3. *c.*114. § 7. If any maker of *common glass bottles* shall be desirous of making common bottles or other vessels or utensils of *common bottle-metal only* in any distinct and separate glasshouse and building, and shall deliver to the surveyor or supervisor of the division where such glass-house is situate a declaration in writing of his being desirous to be charged with and pay the said duty according to the weight of the bottles (*a*), and shall specify the particular glasshouse and building in which he is desirous of making the same; in such case the officer shall not charge the duty from any gauge taken by him in any pot or materials or preparations used by such maker: Provided always, that such declaration shall be in force for six months at least from the time of the delivery thereof, and from thenceforth until the same be revoked or withdrawn by a notice in writing, delivered by such

Declarations to remain in force for six months at least.

bottles, or shall be opened by the proper officer in pursuance of ch previous notice as is hereinafter directed for the purpose of hting a fire for the annealing or for the drawing out the bottles, repairing the arch: And if any such maker shall neglect or use at his own expense to provide such iron grating, or to affix e same in manner aforesaid; or to pay for any lock, key, or other cessary fastening provided by such surveyor or supervisor; or if y person shall obstruct or hinder any officer or person by him ployed in fixing such fastening, or in the locking, sealing, or curing any such annealing arch or oven, or the mouth or iron ating thereof, or fastening as aforesaid; or by any means or ntrivance whatsoever shall open any such lock, or annealing ch or oven, or the mouth or iron grating thereof, before the same all have been unlocked and opened by the officer; or shall wil-lly break or damage any such lock, seal, or fastening, he shall r every such offence forfeit 200*l.*: Provided always, that no such nealing arch or oven shall remain unlocked or open for any pur-se or for any pretence whatever (except for repairing when npty), for more than 24 hours from the time when opened by the ficer, who may, at the end of such 24 hours, lock, fasten, and al such annealing arch and oven, and the mouth and iron grating ereof.

35 G.3. c.114.

Penalty on obstructing officers, or opening such locks.

Annealing arch not to remain open more than 24 hours, except for repairs.

§ 10. And where locks, keys, or fastenings shall be provided in rsuance of this act, every such maker to whom the same shall long shall, when required by the surveyor or supervisor, imme-ately alter, repair, and amend the same according to such quisition; on pain of forfeiting 100*l.*

Locks, &c. to be altered and repaired, when required by the officer.

§ 11. And when any such maker having delivered such declara-n shall be desirous to light any fire to heat his annealing arch oven, he shall give to the officer 12 hours notice in writing, and ch officer shall attend at the time, and unlock and open such an-aling arch or oven, and the mouth and iron grating thereof; and such maker shall neglect or refuse to light such fire within one ur, such notice shall be void, and such officer shall again lock , fasten, and seal the same, and such maker shall give a like and sh notice before the same shall be again opened.

Makers to give 12 hours notice of their intention to heat annealing arches.

Officers to attend and unlock them.

Fire to be lighted within an hour.

§ 12. Every such maker having delivered, &c. shall, when any ch common-glass bottles are blown or made, remove the same rectly into such annealing arch or oven, and shall there deposit e same in such manner as such officer shall approve, and so that e same may the most easily and securely be viewed and examined, d the number and kinds thereof ascertained in each annealing ch or oven; and no such maker shall at one time put or keep in y such annealing arch or oven any common bottles of different akings, or fillings of the pots; nor put or keep any other sort or ecies of glass or glass wares whatever, or any phials in any such nealing arch or oven entered or made use of for the annealing common bottles; on pain of forfeiting 50*l.*

Bottles when blown to be removed into the annealing arch.

Bottles of different makings not to be put therein at the same time, nor any other sort of glass.

§ 13. And every such maker, having delivered, &c., and having gun to work any common bottle-metal from out of any pot, all, without any unnecessary delay or interruption, continue to rk out all the pots then charged, and shall finish the working t thereof within 16 hours after he began; and as soon as such tal shall be so worked out as aforesaid, and the bottles put into e annealing arch or oven, such maker shall, in the presence of

The whole metal intended to be manufactured, to be worked within 16 hours.

35 G.3. c.114.

the officer, again charge every such pot with fresh materials or preparations (other than cullet or broken glass), not less than 50*l.* weight; and shall also deliver to such officer a declaration in writing, specifying the true number of bottles, and whether the same are reputed quart or pint bottles, or bottles of any other and what reputed measure, and the number and kinds of any other vessels or utensils of common bottle-metal contained in every such annealing arch; on pain of forfeiting 100*l.*: Provided that no such maker shall be liable to the said penalty by reason of his not delivering a true declaration as aforesaid, if the same shall not differ from the number of bottles, vessels, or utensils, in any such annealing arch, in a greater proportion than 5 in 100.

And the pots to be again charged.

A declaration of the number of bottles to be delivered.

Penalty.

Exception.

§ 14. Every maker who shall have begun te work any common bottle-metal out of any pot, shall be deemed to have begun to work out the common bottle-metal out of every pot at that time charged with materials for making common bottles within the same glasshouse or building.

Beginning to work, deemed beginning to work the whole then charged.

§ 15. And every such maker shall keep sufficient scales and weights at the place where he shall manufacture such bottles, and shall, at his own expense, affix a proper hook or staple, in a proper place, to be approved of under the hands of the surveyors or supervisors of the division, and shall suffer any officer to use the same, on pain of forfeiting 50*l.* If any such maker shall, in weighing any such common-glass bottles, make use of any false, unjust, or insufficient scales or weights, or shall practise any art or contrivance by which such officer may be hindered from taking a true weight, he shall forfeit 100*l.*, and also such scales and weights, which may be seized by any officer.

Scales and weights.

Using false weights, or deceiving the officer.

§ 16. Every such maker, having delivered, &c. and being desirous to take any glass bottles out of any annealing arch or oven, shall, twelve hours before he shall begin, give to the officer notice in writing of his intention, specifying each particular arch or oven, and the number thereof, out of which it is intended to take such bottles, and the hour at which he intends to begin; and such

Twelve hours notice to be given of taking bottles out of the annealing arch.

[redacted]

§ 18. Every such maker shall assist, to the utmost of his power, with a sufficient number of his servants, such officer in weighing and taking an account; on pain of forfeiting 50*l*. 35 G.3. c.114. Makers to assist.

§ 19. The allowance made by 17 *G.*3. *c.* 39. of one fifth part of the metal or other materials contained in pots for making common bottles is repealed. Allowance by 17 G.3. repealed.

§ 20. If any such maker, having delivered, &c. shall convey away any common-glass bottles from any annealing arch or oven before the same be weighed, or shall neglect or refuse to produce the same to such officer to be weighed; he shall forfeit 100*l*. Bottles not to be removed till weighed.

§ 21. Every such maker having delivered, &c. shall keep all common-glass bottles which have not been weighed separate from those that have been weighed, and from all other glass wares whatsoever; on pain of forfeiting 50*l*. Bottles weighed and unweighed to be kept separate.

§ 22. If any such maker, having delivered, &c., shall use any private or concealed annealing arch, oven, utensil, or place, other than those entered, or shall fraudulently remove or convey away any common-glass bottles before the same have been weighed; or hide or conceal the same; he shall forfeit 500*l*. Using private annealing arches or concealing bottles unweighed.

§ 23. No such maker having delivered, &c. shall make within the same glasshouse, entered or used for making common bottles, or in any building thereto adjoining, any phials or other sort of glass or glass ware, except common bottles and other vessels and utensils of common bottle-metal, which vessels and utensils shall be such only as were immediately before the passing of this act usually made of common bottle-metal; on pain of forfeiting 200*l*. No phials, &c. to be made in places entered for making common glass bottles.

§ 24. If any officer shall suspect that any common glass bottles have been fraudulently conveyed away before the same have been weighed, and are deposited, hid, or concealed in any place whatsoever, if within the limits of the chief office in *London*, upon oath made by such officer before two commissioners of excise, elsewhere before one justice, setting forth the ground of his suspicion, such commissioners or justice may by special warrant empower such officer by day or night (but if in the night in the presence of a constable) to enter such suspected place, and to seize and carry away all such common-glass bottles, or other such vessels there found, as forfeited. And if any person shall obstruct such officer, or any person acting in his aid, in the execution of such warrant, he shall forfeit 200*l*. Upon suspicion that bottles have been removed before weighed, officers by warrant may search suspected places. Obstructing such officers.

§ 25. If any person shall obstruct any officer in the execution of any powers given to him by this or any other act relating to glass, he shall (except where other penalties are herein imposed) forfeit 200*l*. Obstructing officers in their duty.

§ 26. Provided that nothing herein contained shall extend to make it unlawful for any officer at all times to inspect, examine, gauge, or otherwise take an account of the materials mixed and prepared for the making of glass in any glasshouse, as well before the same shall be put into any pot as after, or to take samples, not exceeding four ounces in the whole, out of each pot or other vessel containing such preparation. Officers may gauge materials and take samples.

And by stat. 17 *G.*3. *c.*39. § 34. The gauger or other officer may take samples not exceeding four ounces in the whole, out of each pot, paying for the same (if demanded) one halfpenny for each ounce; and if any person shall obstruct the officer in taking samples, he shall forfeit 50*l*. 17 G.3. c.39.

19 G.2. c.12. Entry of glass made.

By stat. 19 *G.* 2. *c.* 12. § 13. Every maker (within the bills) shall monthly (and elsewhere once in six weeks) make entry in writing at the next excise-office of the quantities of the materials used in each making, on pain of 20*l.*; which entries shall be made on oath before the commissioners within the bills, and elsewhere, before the collector or supervisor.

55 G.3. c.113.

By stat. 55 *G.* 3. *c.* 113. § 5. In lieu of the oath or affirmation in 19 *G.*2 .*c.* 12. § 13. every maker of *flint*-glass, or *enamel*, *stained*, or *paste* glass, or *phial*-glass, or *spread-window* glass, commonly called *broad*-glass, or *window*-glass, not being spread glass, and commonly called or known by the name of *crown*-glass, or *German sheet*-glass, or who, under the declaration and regulations of 35 *G.*3. *c.*114. shall make *common bottles*, or other vessels or utensils of common bottle-metal, in *London*, or *within the limits of the bills of mortality*, shall monthly, and every maker of such glass in any other part of *G. B.* shall once in every six weeks, make a true entry in writing at the next office of excise, of the weight of all such glass made by him within such respective times, on pain of forfeiting 100*l.*; which entries shall be made upon the oath or affirmation of the makers of such glass, or of their clerk, workman, or servant employed in making the same; and shall be made *within the limits of the bills of mortality*, with such officers as shall be appointed by the commissioners of excise in *England*, who shall attend at the general office in *London* for that purpose, and in all other parts of *G. B.*, with the collectors or supervisors of the district within which the respective glasshouses are situated, without fee.

19 G.2. c.12. Payment of the duty.

By stat. 19 *G.* 2. *c.* 12. § 15. The maker, within the bills, shall in four weeks, and elsewhere in six weeks, after entry pay off the duties, on pain of double duty (O).

Pots breaking.

§ 11. If any pot filled with materials shall crack or break, whereby the whole or any part thereof shall become unfit for service, on proof thereof to the commissioners where such glasshouse shall be situated, they shall make such allowance for the

§ 5, 6. Provided that this shall not extend to unstopping or taking down any stopper from any such pot, which may happen to crack or break while filled with any metal or preparation, for the sole purpose of preventing the loss thereof, or from any other part for the sole purpose of discovering such broken pot; nor to subject any such maker to the said penalty of 50*l.* for unstopping or taking down any stopper from any pot during the time of the filling thereof, and within 36 hours from the time of his having begun to fill such pot. 32 G.3. c.40.

§ 7. Every *such* maker (on his giving to the officer six hours previous notice in writing of his intention) may glaze any new pot previously gauged and taken an account of by the proper officer, and specified in such notice, and for that purpose may take out of any other pot any quantity of metal on which the duty has been charged, not exceeding 40 lbs. in the whole, and put such metal immediately, in the presence of such officer, into such new pot, for the sole purpose of glazing the same, without such maker being liable to any further duty in respect of such metal, or incurring any penalty by reason thereof.

§ 8. And every *such* maker, on his giving six hours notice in writing in manner aforesaid, may cleanse any pot in which any stained glass hath been melted, and specified in such notice, by taking any quantity of unstained metal on which the duty has been charged, not exceeding 10*l.* in the whole, and by lading and unlading the same in the presence of such officer, into and from such pot for that purpose, and by repeating such operations in the presence of such officer, until such pot shall be sufficiently cleansed, without incurring any penalty.

By stat. 51 *G.* 3. *c.* 69. § 7. Nothing in this act shall extend to prevent any maker of flint or phial glass from using a lear, in respect of which no licence hath been taken out, for the purpose of annealing flint-glass of the sort which is made for cutting; provided such lear be immediately contiguous to a lear in respect of which a licence has been taken out, and the entrance of which shall be in the full view of any officer of excise, who shall at the same time observe and inspect the entrance of such contiguous lear, in respect of which a licence shall have been taken out, and the discharge-hole of which shall be in the weighing-room hereinafter mentioned, and not more than 12 feet from the discharge-hole of such contiguous lear, in respect of which a licence shall have been taken out. 51 G.3. c. 69. A lear may be used though not licensed, if placed near a licensed one, and in view of the officer.

§ 11. Every officer of excise, from time to time and at all times, shall mark and number every work-house, pot-chamber, pot-hole, lear, warehouse, room, and other place whatsoever, entered or used by any maker of flint or of phial glass, for the making or keeping of flint or phial glass, or for the preparing or keeping any material or preparation for the making of flint or phial glass; and if any person whatsoever shall hinder any such officer in so marking or numbering, or shall wilfully alter, deface, or obliterate any such mark, or cause or procure any such mark to be defaced or obliterated, or shall connive thereat, the person so offending shall, for each offence, forfeit 100*l.* Officers to number pot-holes, &c. for making glass, or keeping material for making. Penalty.

§ 12. Every maker of flint or of phial glass shall erect, build, make, and construct every lear by him intended to be used for the annealing of flint or of phial glass in a rectangular form, with the Flint and phial glass-makers to construct their

51 G.S. c.69.

lears in a particular form.

sides and ends thereof perpendicular and parallel to each respectively, and the bottom thereof level, and with onl mouth or entrance into the same respectively, and only o charge-hole out of the same, and which said discharge-hol open into and communicate with the weighing-room here mentioned, and no other room or place whatsoever; and such maker shall number all such lears progressively with able mark, and shall continue the same so numbered so l the same shall be so used as aforesaid; and if any such shall erect or construct any lear contrary to this act, o neglect or refuse to so number the same, or so to keep c tinue the same, or shall use any lear not so constructed, ever maker shall, for each such offence, forfeit 100*l*.

Penalty, 100*l*.

Flint or phial glass-makers to affix iron grating to the entrance of the lear, and the lear to be locked by the officer, except when wares are depositing therein.

§ 13. Every such maker shall, at his own expense, find vide, and affix a sufficient and secure iron grating to the mo entrance of every lear by him intended to be used for the a ing of flint or phial glass; and each such lear, and the or entrance, and iron grating thereof, shall be securely l fastened, and sealed by the officer of excise, at all times when such maker shall be actually at work in placing or d ing therein articles, vessels, or utensils of flint-glass or of glass for the annealing the same therein, or when such lea be opened by the proper officer in pursuance of such pr notice as is hereinafter directed for opening the same, f purpose of lighting fire in or heating the same for ann articles of flint or phial glass, or for the purpose of taking an articles from such lear, or for the necessarily repairing the and if he shall neglect so to find any such iron grating, or t the same, he shall, for each such offence, forfeit 100*l*.

Penalty, 100*l*.

Flint or phial glass-maker to anneal all his flint or phial wares in such lear.

§ 14. Every such maker shall place in one or more such lears as aforesaid, for the annealing the same, and shall therein all the flint and phial glass which shall be by him factured; and if any such maker shall omit so to anne portion of such glass by him manufactured, or shall place

of such one hour, lock up, fasten, and seal such lear, and the mouth or entrance and iron grating thereof as aforesaid; and such maker shall give the like and a fresh notice in writing to such officer before such lear, or the mouth or entrance or iron grating thereof, shall be again opened. 51 G.S. c.69.

§ 17. The officer of excise, under whose survey any glasshouse for the making of flint or phial glass shall be, shall, so soon as any journey of flint or phial glass making shall be finished, if the same shall be finished at or before six of the clock in the evening of *Saturday* in any week, and if it shall not be finished at or before six of the clock in the evening of *Saturday* in any week, then at six of the clock in the evening of such *Saturday*, to lock, seal, fasten, and secure every lear belonging to such glasshouse, and the mouth or entrance and iron grating thereof, and to keep the same locked, sealed, fastened, and secured, from thenceforth until such maker shall give to such officer such notice as is herein-before directed of such maker's intention to prepare or kindle a fire as aforesaid to heat such lear, and in no case sooner than the hour of eight in the evening of the *Sunday* next following such locking, sealing, fastening, and securing of such lear; and if any person shall obstruct any such officer, or any person by him employed in that behalf, in so locking, &c. such lear or the mouth, &c. thereof, as such officer shall think expedient to answer the purpose by this act in that behalf intended, or shall attempt or endeavour so to do, or shall by any art whatsoever open any such lear, or the mouth, &c. thereof, after the same shall have been locked, &c., as aforesaid, before the same shall have been unlocked and opened by the proper officer, or shall wilfully break or damage any such lock, seal, or fastening, then the person so offending shall, for each such offence, forfeit 200*l*.

Officers to lock up and seal the mouth of every flint-glass lear as soon as the journey is finished, if finished by Saturday evening, and if not, then to lock up and seal it at that hour, till a notice given for lighting the fire, not earlier than eight on the following Sunday evening.

Penalty, 200*l*.

§ 18. Every such maker shall, at his own expense, find and provide, or construct, a good, sufficient, and secure weighing-room in each flint or phial glasshouse to him belonging, which room shall be near to, and communicate with, the lear of such glasshouse; and save and excepting the discharging-hole of the said lear, no such room shall have more than one door or entrance into the same; and the said door or entrance shall open directly into, and form an immediate communication with, the re-weighing room hereinafter required; and no discharging-hole of any such lear shall open into any place other than such weighing-room; and such weighing-room and the entrance thereof shall be securely fastened and sealed by the officer under whose survey such maker shall be, at all times when there shall be any flint or phial glass therein, or in the lear communicating therewith, except when the same shall be opened by such officer for the purpose of weighing and taking an account of the articles respectively of flint or phial glass therein, and charging the duty thereon, in pursuance of such notice as is hereinafter mentioned, or for the purpose of such maker or his servants arranging the positions of the pans or trays of articles hereinafter mentioned, which shall have been drawn, rolled, conveyed, or conducted through the lears communicating with the said weighing-room into the said weighing-room; and when any such maker shall be desirous of having the entrance of any such weighing-room unlocked or opened for the purpose last aforesaid, such maker shall give to the officer of excise under whose

Flint and phial glass-makers to provide a weighing-room, which is to be kept locked by the officer.

51 G.3. c.69.

survey he shall then be, one hour's previous notice in writing of such his desire, and specifying in such notice the particular weighing-room which he is so desirous to have so unlocked or opened, and the particular time and hour when he desires to have the same so unlocked or opened, whereupon such officer shall attend pursuant to such notice, and shall unlock and open the said entrance, and shall so keep and continue the same for half an hour during which time such maker, or one of his servants, shall be at liberty to arrange the positions of the said pans or trays in the said weighing-room, under the inspection of the said officer; and when the arrangement shall be finished, or at the end of the said half an hour (whichever of them shall first happen), such officer shall again secure the said entrance; and if any such maker shall neglect to find and provide or construct such weighing-room in any such glasshouse to him belonging, he shall, for each such offence, forfeit 200*l.*: Provided that no such maker shall give any such notice as last aforesaid for having the entrance of any weighing-room opened more than once within any 12 hours, nor shall any officer, in pursuance of any such notice, open any such entrance more than once within any 12 hours.

Penalty, 200*l.*

Flint and phial glass-makers to provide annealing pans or trays, with a windlass and machinery for carrying them, with the glass wares therein, through the lear, into the weighing-room.

§ 19. And every maker shall also, at his own expense, construct a proper number of iron pans or trays to receive, during the annealing thereof in the lear of each flint or phial glasshouse to him belonging, all the articles of flint or of phial glass which shall be made or blown in such glasshouse, and shall also find and apply to such iron pans or trays good and sufficient chains, rollers, instruments, apparatus, and machinery, proper for working the said iron pans or trays, and conveying the same with such articles of flint or phial glass therein or thereon, immediately from the mouth of such lear into the said lear for the annealing the same therein, and shall also, at his own expense, find and erect, in the most convenient part of every such glasshouse, a fit windlass for the drawing, rolling, conveying, and conducting every such pan or tray with the said articles from the mouth of the said lear into

articles so made or blown, and shall so continue to deposit on or in the said pan or tray so placed as aforesaid, such articles, until the bottom or surface of the said pan or tray shall be filled or covered, and shall continue all such articles respectively, on or in such pan or tray, until the said articles shall be conveyed or conducted on or in such pan or tray, into the lear of the said glasshouse, as hereinafter mentioned; and so soon as the bottom or surface of such pan or tray shall be filled or covered by such articles, such maker shall, by means of such chains, rollers, instruments, windlass, and machinery as aforesaid, convey and conduct the same, with the whole of the said articles, into the said lear, for the annealing the said articles therein; and such maker shall continue each such pan or tray with the said articles therein in such lear, until the said articles shall be sufficiently annealed; and when the same shall be so annealed, shall in like manner convey and conduct the said pan or tray with the said articles, from out of such lear, directly unto and into the said weighing-room, and shall, without altering or disturbing the positions of such articles, or any of them, on or in such pan or tray, continue the same in the said weighing-room, until the officer under whose survey such maker shall then be, shall have taken an account of and weighed the said articles respectively, and charged the duty in respect thereof respectively; and if any maker shall neglect or refuse to put, lay, or deposit any article of flint or of phial glass on or in one of such pans or trays so placed as aforesaid, when and so soon as such article shall be blown or made, or shall neglect or refuse to proceed, or so to continue to deposit on or in the said pan or tray so placed as aforesaid, such articles as aforesaid, until the bottom or surface of the said pan or tray shall be filled or covered, or shall neglect or refuse to continue any such articles on or in such pan or tray as aforesaid, or shall neglect or refuse so to convey or conduct any such pan or tray, with the whole of the said articles, into the said lear, for the purpose of annealing the said articles; or if any such maker shall neglect or refuse to continue any such pan or tray with the said articles in any such lear, until the said articles shall be so annealed, or shall neglect or refuse so to convey or conduct in manner in that behalf aforesaid, any such pan or tray with such articles as in that behalf aforesaid, therein or thereon, out of such lear directly, unto and into the said weighing-room, or shall neglect or refuse to continue any such articles in that behalf aforesaid, without altering the positions thereof, or the position of any of them, in any such pan or tray as in that behalf aforesaid, or to continue the same in the said weighing-room until the officer, under whose survey such maker shall then be, shall have taken an account of and weighed the said articles, and charged the duty, every such maker shall, for each such offence, forfeit 200*l.*

51 G.3. c.69.

to convey them into the lear, and from thence into the weighing-room.

Penalty, 200*l.*

§ 21. Every such maker shall, so soon as any journey or making of flint or phial glass shall be finished, and before the mouth, entrance, or iron grating of the lear into which the articles of that journey or making shall have been put, shall be locked, fastened, or secured by the proper officer, deliver to the proper officer a declaration in writing, specifying the true number of such iron pans or trays as aforesaid, into or on which such articles of that particular journey or making shall have been put, and which shall have been so filled with such articles, and put or deposited in each

Flint and phial glass-makers to give the officer a declaration of the number of pans filled with glass, of that journey.

51 G.3. c.69.

such lear; and if any such maker shall neglect to deliver su
claration in writing, such maker shall, for each such offenc
Penalty, 100*l.* feit 100*l.*

Flint and phial glass-makers to provide scales and weights at the glasshouse.

§ 22. Every such maker shall keep sufficient and just scal
weights at the place where he shall make any flint or phial
and shall at his own expense find and affix within his wei
room and re-weighing room respectively, fit and proper ho
staples, and also permit any officer to use the same for th
pose of weighing and taking an account of and re-weighi
flint and phial glass respectively, which shall at any time
the possession of such maker; and if any such maker shall n
to keep such scales and weights, or either of them, or shall not
own expense find and affix such fit and proper hooks or sta
aforesaid, or shall not permit any officer of excise to u
Penalty, 100*l.* same, such maker shall, for each such offence, forfeit 100*l.*
if any such maker shall, in the weighing or re-weighing
flint or phial glass, make use of any false or insufficient sc
weights, or shall practise any art by which any such office
be hindered from taking the just weight of any such flint o
Making use of false scales, 500*l.* glass, in every such case such maker shall, for each such o
forfeit 500*l.*, with all such false or insufficient scales and w
respectively, and the same shall be seized by any offi
excise.

Flint and phial glass-makers to give six hours notice for having the weighing rooms opened.

§ 23. Every such maker, being desirous to have any wei
room to him belonging unlocked and opened, for the purp
weighing and charging with the duty any flint or phial glass
in, shall give to the officer, under whose survey he shall th
six hours' previous notice in writing of his desire, and spec
in such notice each particular weighing-room which he des
have so unlocked or opened, and the particular time and h
which he desires to have the same so unlocked or opened
upon such notice such officer shall attend at the time men
in such notice, and shall unlock and open such weighing-
and such officer shall proceed to weigh the whole of th

, from entering any such place where such officer shall so search-warrant.
such flint or phial glass to be so deposited or concealed, or
ig or carrying away the same, or in the due execution of
h warrant, the person so offending shall, for each such
forfeit 200*l.*

All enamel, stained, or paste glass, which shall be made in Enamel, stained, or paste glass.
hall be taken to be flint-glass within this act.

And in every such weighing of any such flint or phial glass, Turn of the scale to be in favour of the crown.
1 of the scale shall be given in favour of the crown, and in
reof there shall be allowed to such maker one pound weight
ich one hundred pounds of such flint or phial glass so
l.

And every such maker shall, at his own expense, find and Glass-makers to provide a re-weighing room, for depositing the flint-glass weighed and charged by the officer, for a certain time, unless re-weighed in the interim by the supervisor.
ct a good and secure re-weighing room, adjoining to each
hial glasshouse, as the case may require, to him belonging,
oom shall be contiguous and next adjoining to the said
g room, and shall be separated therefrom only by a wall not
an two feet in thickness, and the door of communication
e in such wall between the said weighing room and re-
g room; and no such re-weighing room shall have more
o doors or entrances into the same, one thereof being the
or of communication between the said weighing room and
hing room, and the other thereof opening into or commu-
; with any part of the premises appertaining to the glass-
o which such re-weighing room may belong; and each
-weighing room, and the doors or entrances thereof, shall
rely locked, fastened, and sealed by the officer under
survey such maker respectively shall be, whenever any
hich shall have been weighed and charged by such officer
e placed or deposited therein, for the space of six hours
e same shall have been weighed, unless the same shall have
ener re-weighed by the surveyor or supervisor of excise,
ng to the directions of this act; and so soon as any flint or

51 G.3. c.69.

visors respectively may have an opportunity to weigh or
the same; and the said respective surveyors or supervisc
weigh or re-weigh all such flint and phial glass respect
cordingly; and if upon the re-weighing thereof any a
weight shall be discovered or found, such additional wei
be charged with the duties payable for such flint or phi
and if any such flint or phial glass so removed and
into any such re-weighing room shall not be re-weighe
surveyor or supervisor within the said six hours, then th
under whose survey such maker shall then be, shall l
and fasten the said weighing room and the said door
munication between the same and the said re-weighing r
shall unlock and open the said other door or entrance int
re-weighing room; and if any such maker shall neglect
construct such re-weighing room as aforesaid, or shall
when any flint or phial glass shall be weighed by th
officer, with a sufficient number of his workmen, to ren
such flint or phial glass without delay and with all due
from the said weighing room into the said re-weighir
or shall neglect to place the same or any part thereof in
re-weighing room as aforesaid, separate from all other gl
soever, or shall remove or suffer to be removed from
weighing room any flint or phial glass before the en
hours next after the same shall have been so weighe
proper officer, unless the same shall have been sooner w
re-weighed by the respective surveyors or supervisors, tl
so offending shall, for each such offence, forfeit 200*l.*:

No iron grating, weighing-room, or re-weighing room to be deemed sufficient, unless approved of by the supervisor of excise.

that no iron grating, weighing room, or re-weighing ro
be deemed to be a sufficient or secure iron grating, &c.
same shall be approved of by the respective surveyors
visors of the district within which the lear of the mouth or
of which such iron grating shall belong, or for which the
intended, shall be situate, or within which such weighing
re-weighing room shall be situate.



secured as aforesaid, or into any such weighing room or re-weighing room, after the same or the door or entrance of the same respectively shall have been locked, sealed, fastened, or secured as aforesaid, before the same respectively shall have been unlocked and opened by the proper officer of excise, or shall wilfully break or damage any such door, lock, seal, iron grating or fastening, every such maker or other person so offending shall, for each such offence, forfeit 200*l.* 51 G.3. c.69.

§ 29. Where any locks, keys, or fastenings shall be provided in pursuance of this act, every maker to whom such locks, &c. shall then belong shall, at his own expense, at all times when required so to do by the respective surveyors or supervisors of the division in which such his glasshouse shall be situate, immediately set about altering, repairing, and amending, and shall also, within a reasonable time then next following, alter, repair, and amend the same respectively, according to such requisition; and if any such maker to whom any such locks, &c. or any of them shall belong, shall neglect immediately to set about altering, &c., or to alter, &c. the same when thereunto required according to this act, he shall, for each such neglect, forfeit 100*l.* Locks and fastenings to be altered and kept in repair by the flint and phial glass-makers. Penalty, 100*l.*

§ 30. Every maker of flint or of phial glass shall, so often as he shall be thereunto required by the officer under whose survey he shall then be, with a sufficient number of his workmen, assist to the utmost of his power such officer, &c. in weighing and taking an account, or in re-weighing all flint or phial glass of such maker, on pain of forfeiting, for every neglect, 100*l.* Flint and phial glass-makers to assist officers in weighing and re-weighing. Penalty 100*l.*

§ 31. Every maker of flint or of phial glass shall keep all flint or phial glass respectively in his possession, and which shall not have been weighed by the officer according to this act, separate from all flint and phial glass which shall have been weighed, and from all other glass wares whatsoever, on pain of forfeiting 100*l.* Unweighed flint and phial glass to be kept apart from all weighed flint glass. Penalty 100*l.*

§ 32. If any maker of flint or phial glass shall fraudulently remove away any flint or phial glass from any place before the proper officer shall have weighed the same, or shall neglect to produce any such glass to such officer that he may weigh the same, he shall for each such offence forfeit 500*l.*, together with all such glass; and the same may be seized by any officer of excise. Flint glass-makers conveying away flint or phial glass before weighed. Penalty 500*l.*

§ 33. If any such maker shall, for the annealing of any flint or phial glass, use any private or concealed lear, annealing arch, oven, utensil, or place whatsoever, other than his known lear entered for that purpose, or shall practise any art for answering the purpose of a lear, or annealing arch or oven, for the purpose of annealing any flint or phial glass, or if any such maker shall use any art other than an entered lear, to answer the purpose of a lear, for the annealing of any flint or phial glass, each such maker shall, for each such offence, forfeit 200*l.* Flint and phial glass-makers not to use any but an entered lear. Penalty, 200*l.*

§ 34. [This section is now repealed by stat. 6 *G.* 4. *c.* 117. § 8. *post.*]

§ 35. Every such maker shall, so soon as any journey shall be finished, if the same shall be finished at six in the evening of *Saturday* in any week, or if the same shall not be finished at such hour, then every such maker shall at such hour, in the presence of the officer under whose survey such maker shall then be, again Makers to charge their pots with fresh materials at six in the evening of Saturday,

51 G.3. c.69.

presence of the officer. Penalty, 200*l.*

charge each pot from out of which any glass wares shall have been worked in such journey with fresh materials or preparations (other than cullet or broken glass) not less than 50lbs. weight; and if any such maker shall not, in the presence of such officer, so soon as any journey shall be finished, if the same shall be finished before six in the evening of *Saturday* in any week, or if the same shall not be finished at or before such hour, then if such maker shall not at such hour, in the presence of such officer, again charge each such pot with fresh materials or preparations as aforesaid, the person so offending shall, for each such offence, forfeit 200*l.*: Provided that nothing herein-before contained shall extend to subject any such maker to the said last-mentioned or any other penalty, by reason of his not charging with such fresh materials or preparations as aforesaid any such pot from out of which such maker shall, in the presence of such officer, and under a previous notice in writing given by such maker to such officer by the space of two hours, have laded out into water the whole of the metal remaining in any such pots at the time of such lading as aforesaid.

But penalty not incurred if the metal be laded out from the pot into water in the presence of officer.

No such maker to manufacture other glass in his flint glass-house, &c. on penalty of 100*l.*

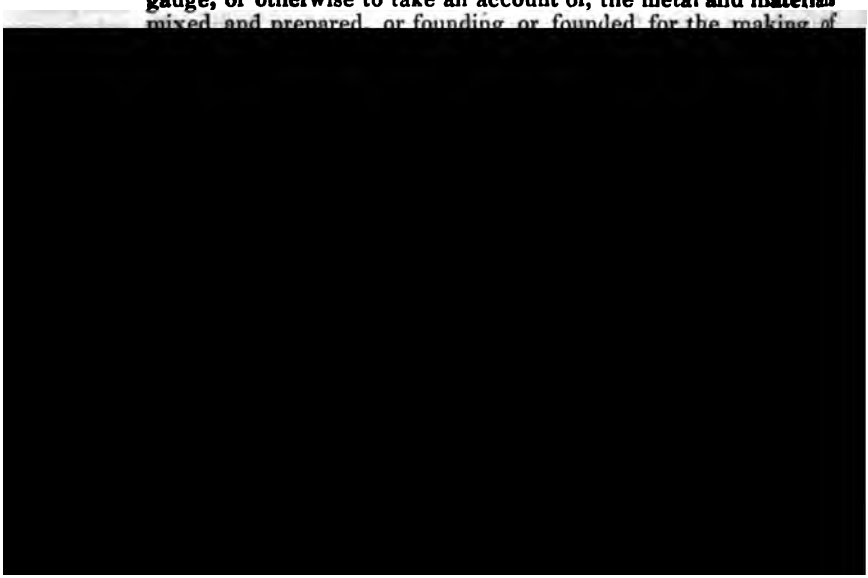
§ 36. No such maker shall make within the same building by him entered or used for the making of flint or phial glass, or in any building adjoining thereto, any sort of glass or glass wares whatever other than flint or phial glass, on pain for each such offence of 100*l.*

Not to make of common bottle metal any bottle less than a reputed half pint. Penalty 50*l.*

§ 37. No maker of glass shall make of common bottle-metal any bottle or bottles smaller or of less size or content than what is commonly deemed a half-pint bottle; on pain of forfeiting 50*l.*

Penalty on obstructing officers, 300*l.*

§ 38. If any person shall obstruct or hinder any officer in the execution of this or any other act relating to flint or phial glass, he shall, for each such offence (other than those for which any penalty is herein-before specially imposed or provided) forfeit 300*l.*: Provided, that nothing in this act contained shall extend to make it unlawful for any officer from time to time to inspect, examine, gauge, or otherwise to take an account of, the metal and materials mixed and prepared, or founding or founded for the making of



except where the same are expressly repealed or altered by this act, shall be and remain in full force and effect, to all intents and purposes; and the said powers, authorities, methods, rules, directions, regulations, penalties, forfeitures, provisions, clauses, matters, and things, except as before excepted, shall continue and be duly observed, practised, applied, used, and put in execution throughout the whole kingdom of *G. B.*, as fully and effectually to all intents and purposes (except as before excepted) as if the said powers, authorities, rules, directions, regulations, penalties, forfeitures, provisions, clauses, matters, and things had been expressly inserted and re-enacted in this present act. 51 G.3. c.69.

By stat. 58 *G.* 3. *c.* 21. the 49 *G.* 3. *c.* 63. and 51 *G.* 3. *c.* 69. (relating to spread window-glass, crown-glass, and flint and phial glass) are respectively continued to 5th *July* 1819, and from thence by stats. 59 *G.* 3. *c.* 104. and 1 & 2 *G.* 4. *c.* 13. until 25th *July* 1824. Stat. 59 *G.* 3. *c.* 104. is continued by stat. 5 *G.* 4. *c.* 40. until 10th *Oct.* 1827, and by 7 & 8 *G.* 4. *c.* 40. until 10th *Oct.* 1830. 58 G.3. c.21. 59 G.3. c.104. 1 & 2 G.4. c.13. 5 G.4. c.40. Continuance of acts.

By stat. 59 *G.* 3. *c.* 104. § 3. Every maker of flint-glass and phial-glass shall, at his own expense, provide and make entry of proper and sufficient boxes or vessels, for containing all the chest-metal and waste glass and skimmings produced on each weekly making of flint-glass and phial-glass, and shall from time to time, as the same is produced on such weekly making, forthwith put and place in such boxes or vessels all the chest-metal and waste glass and skimmings of each particular weekly making of flint-glass and phial-glass, and keep and continue the same in the particular boxes or vessels; in which the same shall be so put and placed, except when taken out daily for the purpose of being picked and sorted, in which case the same shall be so taken out in the presence of and weighed by the proper officer of excise, and shall be kept separate from all other glass of any other weekly making until the same is weighed, taken account of, and re-weighed, as provided by law for and in respect of manufactured flint-glass; and so soon as each such weekly making of glass shall be finished, shall produce the same to be weighed and taken account of by the proper officer, and re-weighed by the supervisor of excise, as provided by law for and in respect of manufactured flint-glass; and shall reflux the same and every part thereof in the next, or next but one, succeeding charge of his pot or pots for making flint or phial glass; and if any maker of flint-glass or phial-glass shall neglect or omit to find or provide proper and sufficient boxes or vessels for the purpose in that behalf aforesaid, or to put or place as aforesaid in one or more of such boxes or vessels all the chest-metal and waste glass skimmings of each particular weekly making of flint-glass or phial-glass, or to keep or continue the same and every part thereof in such box or vessel, boxes or vessels, in which the same shall be put and placed as aforesaid, as and when the same are produced in the manufacture of the glass of such weekly making, except as aforesaid, until the same shall be weighed and taken account of by the proper officer, and re-weighed by the supervisor of excise, as provided by law for and in respect of manufactured flint-glass; or shall neglect or omit, when and so soon as any weekly making of flint-glass or phial-glass is finished, to produce the same, together with the metal laded out at the end of every such weekly making of such glass, to the proper

59 G.3. c.104. Makers of flint or phial glass to provide boxes or vessels, and put therein all the chest-metal and waste glass and skimmings of each weekly making; to be taken out to be picked in the presence of the officer, who shall take an account of every weekly making.

Penalty on maker for default, 200*l.*

59 G.3. c.104. officer, to be so weighed and taken account of, and re-weig the supervisor as aforesaid; or shall mix, put, or place an chest-metal, or broken or waste glass or skimmings, o thing, with the chest-metal or waste glass and skimmings particular weekly making of such glass; or shall produce officer to be weighed and taken account of, or to the sup to be re-weighed as aforesaid, any other chest metal, or or waste glass, or other thing, except such skimmings an metal as aforesaid, with the chest-metal or waste glass an mings and laded metal of that particular weekly making o or shall produce to be weighed or re-weighed as aforesa chest-metal or waste glass or skimmings or laded metal wh before been weighed and taken account of, or re-weighed a said; or shall convey away or conceal, or not reflux such metal or waste glass skimmings or laded metal, or an thereof, at such time and in such manner as aforesaid, a chest-metal, broken or waste glass and skimmings, laded and other thing, shall be forfeited, and may be seized by any of excise; and every maker of glass so offending shall, fo such offence, forfeit the sum of 200*l.*

If in weighing the vessels of flint or phial glass of any weekly making, &c. the weight produced shall not amount to 98 parts of 100 parts of the gross quantity of metal put into the pot, the deficiency shall be charged with duty.

§ 4. Whenever any officer of excise shall weigh the articles, and utensils of flint-glass or phial-glass of any pa weekly making, he and they shall also weigh the chest-me waste-glass and skimmings of that weekly making, and a metal laded out at the end thereof; and if the weight of ticles, vessels, and utensils of flint-glass or phial-glass of a ticular weekly making of flint-glass or phial-glass respe together with the weight of the chest-metal and waste glas mings, and laded metal aforesaid, of the same weekly mak produced and weighed, or re-weighed as aforesaid, sh amount to ninety-eight parts of every hundred parts of th quantity of all the metal, materials, and preparations whic have been in the pot or pots made use of in that weekly m according to the best and highest gauge which shall or ma been taken of the fluxed metal thereof by any officer or offi excise, the maker or makers of such glass shall be deem taken to have made and manufactured articles of flint-gl phial-glass of equal weight to the weight of such deficiency ninety-eight hundred parts of the gross quantity of such metal as last aforesaid, and shall be charged with and pa for the same, as if such last-mentioned articles had been pr to and weighed by the proper officer of excise: Provided, t such deficiency shall of itself, and without any proof fraudulent removal or concealment of any part of the glass weekly making of glass, subject any such maker as afores any penalty for having fraudulently removed or concealed th so deficient.

Makers to keep sufficient scales and weights for the officers taking an account, and assist them in weighing the metal.

§ 5. Every maker of flint-glass or phial-glass shall, an hereby required, to keep sufficient and just scales and wei the place or places where he shall make or manufacture an glass or phial-glass, and shall at his own expense find, provid affix fit and proper hooks or staples, and also permit and suf officer of excise to use the same for the purpose of weighi taking an account of and re-weighing the chest-metal, brok waste glass, which shall at any time be in the possession o

nd makers; and shall at all times (when requested by the 59 G.3. c.104.
› to do) by himself or by a sufficient number of his ser-
ve all necessary assistance to any officer of excise in weigh-
taking a just and true account of or re-weighing such
etal, broken or waste glass; and if any such maker shall
to keep such scales and weights, or either of them, or shall
is own expense, find, provide, and affix, in manner afore-
:h fit and proper hooks or staples as aforesaid, or shall not
any officer of excise to use the same, or shall at any
fuse or neglect to give such help and assistance as afore-
ery such maker shall, for every such offence, forfeit the
one hundred pounds; and if any maker of glass, or his Penalty, 100*l.*
shall, in the weighing or re-weighing of any chest-metal
› glass, make use of, or cause, or procure, or suffer to be
se of, any false, unjust, or insufficient scales, weight or
, or shall practise any art, device, or contrivance, by which
:er of excise shall or may be hindered from taking and
ning the just and true weight of any such chest-metal,
or waste glass, then and in every such case such maker Penalty on using false weights, 500*l.*
r each and every such offence forfeit the sum of 500*l.*,
such false, unjust, or insufficient scales and weight or
respectively, and the same may be seized by any officer
se.

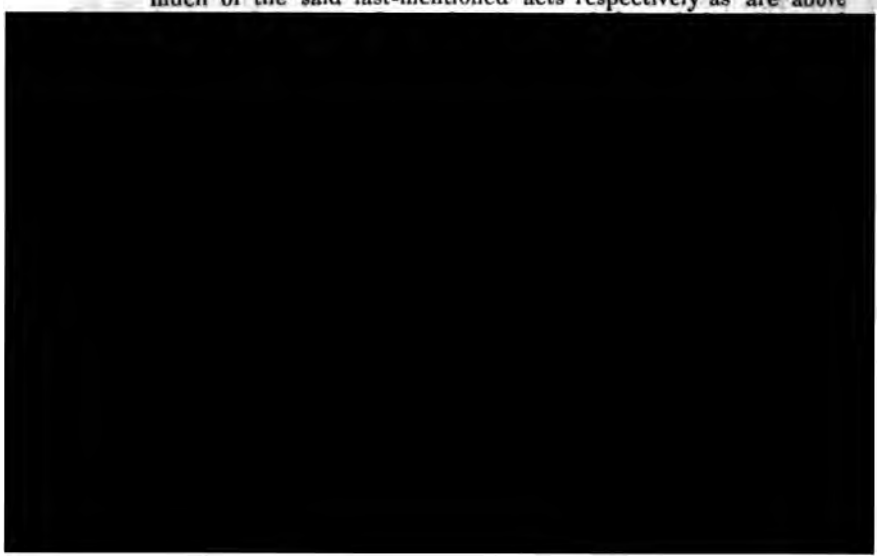
No such maker shall be compelled to reflux or incur any No penalty to be incurred for not refluxing chest-metal, &c. declared to the supervisor to be refuse glass; or for not refluxing coloured or stained glass till next making, or the one following, &c.
for not refluxing any chest-metal, skimmings, or broken
e glass that shall be mixed with and constitute part of the
l and re-weighed chest-metal, skimmings, or broken or
lass, of any weekly making of glass as aforesaid, and which
ıker, or his foreman or principal servant, shall show and
to the supervisor, at the time of the re-weighing of the
ıetal, skimmings, broken or waste glass of such weekly mak-
glass, to be refuse glass, and unfit for immediate manufac-
ıd shall afterwards pick and separate from the rest of the
ıetal, skimmings, broken or waste glass of such weekly
of glass; and that no such maker as aforesaid shall be com-
o reflux or incur any penalty for not refluxing any coloured
ıed glass so re-weighed as aforesaid, until his or her next
, or next making but one, of the like coloured or stained
and that no such maker as aforesaid shall be subject or
o pay duty for any deficiency of glass produced, weighed,
weighed, as the produce of any weekly making of glass as
id, which has arisen and been occasioned by the unavoid-
ıs of the metal through the sudden cracking or breaking
pot at the time the same is charged with and contained
etal, and which shall be satisfactorily shown and proved to
cer at the time the same shall so happen; and that no such
ıs aforesaid shall incur any penalty by reason of his or her
uxing at the time aforesaid any metal laded out of the pot
ter, provided such metal shall be weighed and re-weighed
e, and be lodged in and kept in some room or place separate
art from all other broken or waste glass, and under the
ate survey and inspection of the officer of excise, until all
led metal shall be, under notice in writing, delivered to the
officer, and in his presence put into the pot to be re-

59 G.3. c.104. fluxed as aforesaid; any thing herein contained to the contrary notwithstanding.

Continuance of 59 G.3. c.104. § 7. This act, in force until the 5th *July*, 1820, and afterwards continued until 10th *October*, 1830, by stat. 5 *G.* 4. *c.* 40. and 7 & 8 *G.* 4. *c.* 40.

6 G.4. c.117. Repeal of so much of 17 G.3. c.39. § 31. as respects the allowance on flint and phial glass; and the whole of the flint-glass fluxed in each week to be worked out by six o'clock on Saturday, under penalty of 200*l.*

By stat. 6 *G.* 4. *c.* 117. § 8. Reciting, that by stat. 17 *G.* 3. *c.* 39. § 31. it was enacted, that in all pots containing more than 1 cwt. used for preparing and mixing metal and other materials for making of flint, enamel, stained glass, and of all phial-glass, an allowance should be made to the makers of such glass of one-fourth part of the metal or other materials contained therein, and of one inch deep at the bottom of every such pot, and in small pots commonly called pile ends, which will not contain 1 cwt., and used as aforesaid, an allowance should be made to such makers of one-fifth only of the metal or materials contained therein; and that by stat. 51 *G.* 3. *c.* 69. it was further enacted, that all and every maker and makers of flint-glass or phial-glass should be required, at or before the hour of six in the evening of *Saturday* in each and every week, to work out into wares, or to cause and procure to be worked out into wares, the whole of the metal or preparation which shall at any time during that week have been founded or melted into any pot or pots to him, her, or them belonging, for the making of flint-glass or phial-glass, on pain to forfeit for every neglect or refusal thereof the sum of 200*l.*; provided that nothing therein-before contained should extend to subject any maker or makers of any flint-glass or of phial-glass, to the said last-mentioned penalty, for or by reason of his, her, or their not working out the allowance of one inch deep, made to such maker or makers by an act passed in the seventeenth year of his majesty King *George* the third, at the bottom of any such pot, any thing therein-before contained to the contrary in anywise notwithstanding; it was therefore enacted, that from and after the said 5th day of *July*, 1825, the same, or so much of the said last-mentioned acts respectively as are above



ccording to the provisions of this act; and if any such maker or makers of glass as aforesaid shall neglect or refuse so to do, he, he, or they shall, for every such pot in respect of which he, she, r they shall commit or make such neglect or refusal, forfeit the um of 200*l.* 6 G.4. c.117.

§ 9. That from and after the said 5th day of *July*, 1825, at the nd of every round or period of six weeks, an account shall be taken nd made out by the supervisor, surveyor, or officer of the district r place in which the glasshouse of any maker or makers of flint-lass shall be situate, of the whole quantity of flint-glass for or in respect of which such maker or makers of glass as aforesaid shall ave been charged with duty upon the fluxed materials, or metal, r other preparations from which such glass as aforesaid shall ave been made, after deduction of the gauged weight of all fluxed materials, metal, or other preparations taken account of by he officer, and laded out of the pot, according to the provisions of this act, and of the whole weight of manufactured flint-glass nd flint-glass wares weighed, or which shall have been made by such maker or makers of glass as aforesaid, within such round or period of six weeks as aforesaid; and if, upon such account being taken and made out as aforesaid, the weight of such manufactured glass and glass wares as aforesaid shall exceed the quantity of such glass as aforesaid, with which such maker or makers of glass as aforesaid shall have been so charged with duty, after such deduction as aforesaid, by any quantity greater than the quantity of *50 per centum* of or upon the whole quantity of such glass as last aforesaid, every such maker or makers of glass as aforesaid shall be charged with and pay the sum of 6*d.* *per* pound upon each and every pound weight of such excess, over and above any duty which such maker or makers of glass as aforesaid shall have paid, or may have been charged with, upon the fluxed materials, or metal, or other preparations from which such glass as aforesaid shall have been made.

Officer to make out an account at the end of every round or period of six weeks of the whole quantity of glass charged with duty, and the whole weight of glass weighed within such period, and to charge 6*d.* per lb. additional duty upon every pound weight of such excess.

§ 10. That no pot for the making of flint-glass shall be gauged, r the dimensions thereof taken by the officers of excise, unless the maker or makers of flint-glass to whom such pot shall belong shall give notice to the officer under whose survey he, she, or they shall then be, of his, her, or their intent or desire to have such pot examined and gauged, or the dimensions thereof taken as aforesaid; and no pot for the making of flint-glass shall be set r put into any annealing arch, for the purpose of drying or hardening the same, until the supervisor or surveyor of the district or place in which the glasshouse of any maker or makers f flint-glass to whom such pot shall belong shall be situate, shall ave re-examined and re-gauged or taken the dimensions of such ot, and shall have marked the same with the initials of his name n the outside thereof; and if any maker or makers of flint-glass hall set or put any pot for the making of flint glass into his, her, r their annealing arch, for the purpose of drying or hardening the ame, before such supervisor or surveyor as aforesaid shall have re-examined and re-gauged or taken the dimensions thereof, or efore he shall have marked the same as aforesaid, or if any such aker or makers as aforesaid shall deface, or counterfeit, or alter, r cause to be defaced, or counterfeited, or altered, any such mark

No pot to be gauged without notice, nor to be set in the annealing arch without having been re-gauged and marked by the supervisor.

6 G.4. c.117.

as aforesaid, he, she, or they shall for every such offence, forfeit and lose the sum of 100*l.*

The supervisor or surveyor to give the dimensions of each pot to the maker, when and so soon as he has ascertained the same by gauge.

§ 11. That when and so soon as any pot for the making of flint glass shall be gauged, and the dimensions thereof ascertained and taken by the supervisor or surveyor of excise, according to the rules and directions to him in that behalf given from time to time by the commissioners of excise for the time being, such supervisor or surveyor shall and is hereby required to give such dimensions or calculation of the capacity and contents of such pot, according to the gauge by him in that behalf taken, to the maker or makers of flint-glass to whom such pot shall belong.

Makers to give six hours' notice of setting pots in the furnace, under penalty of 100*l.* for doing so without notice, or for altering the position of or changing the pots.

§ 12. That no pot or pots for the making of flint-glass shall be set in the furnace, unless the maker or makers of flint-glass to whom such pot or pots shall belong shall give six hours notice thereof in writing to the officer of excise under whose survey he, she, or they shall then be, specifying in such notice the time and hour when he, she, or they intends or intend to set such pot or pots in the furnace, and the particular pot or pots, and marks and numbers on the same, by him, her, or them intended to be so set, and the particular hole in the furnace in which each such pot is intended to be so set; and if any maker or makers of flint-glass shall set any pot for the making of flint-glass in the furnace without having given such notice as aforesaid, or having given such notice, and after the excise-officer attending for such purpose shall have taken an account of and examined the same, shall change or alter the position of any pot, of which he, she, or they shall have given such notice, except in any case of emergency, of which notice in writing shall be given by such maker or makers to the surveying officer within four hours after the making of such change or alteration, and before unstopping the pot, if any materials, metal, or other preparations be therein uncharged with duty, or shall set in the furnace any other pot in lieu or in place of any pot of which he, she, or they shall have given such notice as aforesaid, or in any different hole than the hole of the furnace mentioned in such



the making or working of the same out into glass wares, the whole of the pots charged with such materials or metal, or other preparations, of such particular journey or making, shall be stopped up again, and a fresh and like notice for unstopping the same, or taking down the stoppers thereof, shall be given as aforesaid; any thing in this or any other act or acts of parliament to the contrary thereof notwithstanding; and if any maker or makers of flint-glass shall commit any offence against any of the regulations aforesaid, he, she, and they respectively shall forfeit the sum of 100*l*. 6 G.4. c.117.

Penalty for offending against these regulations, 100*l*.

§ 14. That from and after the said 5th day of *July* 1825, it shall and may be lawful for any maker or makers of flint-glass, after the pots of any particular journey or making of flint-glass to him, her, or them belonging, shall have been charged under a notice by him, her, or them given according to the said act passed in the seventeenth year aforesaid, and after the expiration of the time mentioned in such notice, to fill or charge any fresh pot or pots (commonly called overtakers) with materials or metal, or other preparations for the making of flint-glass, at any time during the making of such journey or making of flint-glass, upon giving such or a similar notice in writing of his, her, or their intention so to do, according to the notice directed to be given by every maker or makers of glass, by the said act passed in the seventeenth year aforesaid, all which said pot or pots (commonly called overtakers) as aforesaid shall be opened in the same manner, and at one and the same time, as the pots of the same journey or making, for the making of flint-glass, are herein-before directed to be opened, and shall be under and subject in every respect to the same penalties, rules, regulations, and directions, as any other pot or pots for the making of flint-glass: Provided always, that if the filling or charging of such pot or pots (commonly called overtakers) as aforesaid, whereof such notice shall have been given as aforesaid, shall not be begun pursuant to such notice, then and in every such case such notice shall be void and altogether null, and of no effect whatsoever.

Makers may charge fresh pots or overtakers, after the expiration of the time mentioned in the former notice to charge, upon giving notice thereof, according to the 17 G.3. c.39. § 38.

§ 15. That where the metal contained in any pot or pots for the making of flint-glass shall become unfit for use, or shall be incapable of being worked or manufactured into wares, the maker or makers of glass to whom any such pot or pots as aforesaid shall belong shall give notice thereof immediately to the officer of excise under whose survey he, she, or they shall then be; and such pot or pots shall be thereupon allowed to remain and continue, until the end of the week in which such pot or pots shall have been charged, with all the materials or metal, or other preparation for the making of flint-glass as aforesaid, therein, at which time the materials, metal, or preparations in such pot or pots, shall be laded out in the presence of the supervisor or the officer of excise, and if such supervisor or officer be satisfied that no alteration has been made therein, the gauged weight of the fluxed materials, metal, or other preparations so laded out as aforesaid, shall be deducted from the weight of the glass with which such maker or makers shall be chargeable with duty upon the gauge thereof taken in such pot or pots as aforesaid; and if any maker or makers of glass shall, after giving such notice as aforesaid, take out any of the materials, metal, or other preparations as aforesaid, from any such glass pot, until *the whole thereof* shall be so laded out

Where the metal in any pot shall become unfit for use, notice thereof shall be given to the officer, and it shall remain to the end of the week, when it shall be laded out, and allowance made for the same.

Makers taking out materials from the pot until the whole shall be laded

6 G.4. c.117. out, or make any alteration therein, to forfeit 200*l*.

as aforesaid, or add any materials, metal, or other preparation thereto, or make any alteration therein, he, she, and they respectively shall for every such offence forfeit and lose the sum of 200*l*.

But makers, on giving six hours notice, may lade out in the presence of the officer the fluxed materials into water, and make such alterations as they think fit for improving the colour.

§ 16. Provided, that if the fluxed materials, metal, or other preparations contained in any such pot or pots, of which such notice shall be given as aforesaid, be coloured glass, and incapable of being used for white glass, or otherwise than as blue, green, or other coloured glass, it shall be lawful for any such maker or makers (on giving six hours notice thereof, and of such his, her or their intention, to the surveying officer of excise, specifying therein the particular pot or pots,) to lade out, in the presence of the supervisor or surveying officer, all such fluxed materials, metal, or other preparations as shall be therein, into water, and thereupon to make such alteration in such materials, metal, or other preparations as he, she, or they may think fit, for deepening or improving the colour thereof aforesaid, and forthwith to re-charge such pot or pots with such materials, metal, or other preparations for the making of such coloured glass as aforesaid only; and every such pot or pots so re-charged shall be deemed and shall be subject to the same regulations as are herein-before provided with respect to such pots as are commonly called overtakers; and that when such pot or pots shall be again unstopped, duty shall be charged upon the gauged weight of all the fluxed materials, metal, or other preparations contained therein, and every such maker or makers shall be liable to pay the duty so charged as last aforesaid, the gauged weight of the fluxed materials, metal, or other preparations so laded out as aforesaid being deducted as aforesaid, any thing herein contained to the contrary notwithstanding.

32 G.3. c.40. § 5. allowing the unstopping of pots break-

§ 17. Reciting, that by the said act, passed in the thirty-second year aforesaid, it is provided, that nothing therein contained shall extend, or be deemed or construed to extend, to subject any



as aforesaid, shall be deducted from the gross gauge of such pot, by which the same, or the metal, materials, or preparation with which such pot was charged were before charged with duty. 6 G. 4. c. 117.

§ 18. And whereas by the said act passed in the seventeenth year aforesaid it is enacted, that if any maker of glass, after such notice as by that act and a certain other act therein directed and required to be given, and a gauge taken by the officer of the metal or preparation in their pots, shall, without a fresh notice in writing, put into such pot any metal, material, or preparation whatsoever, every such maker of glass shall, in every such case, forfeit and lose the sum of 50*l.*: And whereas it is expedient to increase such penalty with respect to flint-glass, in order to deter the maker or makers of such glass from so doing; be it therefore enacted, that if, from and after the said 5th day of *July* 1825, any maker or makers of flint-glass shall, after a gauge taken by the officer of excise of the materials, or metal, or other preparations for the making of flint-glass, in any pot set in the furnace to him, her, or them belonging, put into or add any materials, metal, or preparation whatsoever to such pot, he, she, or they so offending shall for every such offence forfeit and lose the sum of 200*l.* No materials to be added to any pot after the gauge has been taken thereof, under penalty of 200*l.*

§ 19. Reciting that by the said act passed in the fifty-first year aforesaid it is enacted, that all and every maker and makers of flint-glass or of phial-glass shall put, place, or deposit in one or more such lear or lears as aforesaid, for the purpose of annealing the same, and shall anneal therein all the flint-glass and phial-glass respectively which shall from time to time be by him, her, or them made or manufactured; and if any maker or makers of flint-glass or of phial-glass shall omit or fail to anneal in such lear or lears any portion of the flint or phial glass by him, her, or them manufactured, or shall put, place, or deposit in any kiln, stove, or oven, or annealing arch or oven, other than such lear or lears as aforesaid, any flint-glass or phial-glass for the purpose of annealing the same, or shall anneal the same therein, he, she, or they shall for each and every such offence forfeit and lose the sum of 200*l.*; it is therefore enacted, that from and after the said 5th day of *July*, 1825, no maker or makers of flint-glass shall incur such penalty of 200*l.* as aforesaid, by reason of his, her, or their not putting, placing, or depositing in one or more of such lears as aforesaid, for the purpose of annealing the same, or for not annealing therein all the flint-glass which shall from time to time be by him, her, or them made or manufactured; but that it shall and may be lawful for any maker or makers of flint-glass to make or manufacture flint-glass which shall not be so put, placed, or deposited as aforesaid in any lear or lears, or to be annealed therein as aforesaid, upon such maker or makers of glass as aforesaid giving six hours notice in writing to the officer or officers of excise under whose survey he, she, or they shall then be, of his, her, or their intention so to do, specifying in such notice the number and particular pot or pots from which he, she, or they intends or intend to make or manufacture such flint-glass, and the particular kinds of wares to be made therefrom: Provided always, that if such maker or makers of flint-glass as aforesaid shall neglect or omit to give such notice as in that behalf aforesaid, nothing herein contained shall in anywise extend or be deemed or construed to extend to Makers may manufacture flint-glass not requiring to be annealed, upon giving notice thereof to the officer.

1 G.4. c.117.

prevent such maker or makers of glass as aforesaid from incurring such penalty as above mentioned.

Maker desirous of making flint-glass not requiring to be annealed, to provide a secure room for depositing the same therein.

§ 20. That all and every maker and makers of flint-glass who shall be desirous of making or manufacturing any flint-glass which does not require to be put, placed, or deposited in any lear, or to be annealed therein, shall, and he, she, or they is and are hereby required to find and provide, or to build and construct in every glasshouse in which such flint-glass as aforesaid shall be intended to be made or manufactured into glass wares as aforesaid, a good and sufficient and well-lighted room for the placing and depositing therein of such flint-glass or glass wares, which room shall be next to and communicate with such glasshouse; and all and every such maker and makers shall be, in respect of every such room, subject to all and every the penalties and regulations to which flint-glass makers are subject by the provisions of the said act made in the fifty-first year aforesaid, of or concerning the weighing or re-weighing rooms therein mentioned, except so far as the same are altered by this act; and no such room shall have more than one door or entrance into the same, and the said door or entrance shall open directly into and afford and form an immediate communication with such glasshouse, and such room, and the door or entrance thereof, shall be securely locked, fastened, and sealed by the officer or officers of excise under whose survey such maker or makers of flint-glass shall from time to time be, at all times when there shall be any such flint-glass therein as aforesaid, save and except when the same shall be opened by such officer or officers for the purpose of putting or depositing such glass as aforesaid therein, or of weighing and taking an account of such flint-glass or glass wares therein as aforesaid; and when any such maker or makers of flint-glass shall be desirous of having the door or entrance of any such room unlocked or opened for any of the purposes aforesaid, such maker or makers shall give to the officer of excise under whose survey he, she, or they shall then be, one hour's previous notice in writing of his, her, or their being desirous



or entrance for weighing glass as aforesaid more than once within the space of any twelve hours, or at any other time than as aforesaid; any thing herein-before contained to the contrary in anywise notwithstanding. 6 G.4. c.117.

§ 21. That all and every maker or makers of flint-glass who shall make or manufacture any flint-glass which does not require to be put, placed, or deposited in any lear, or to be annealed therein, such maker or makers of flint-glass having provided such room as by this act required for placing and depositing the same therein, shall, as soon as such flint-glass shall be made or manufactured into glass wares, lay or deposit all such flint-glass, or the wares into which the same shall be made or manufactured, in trays or baskets to be by him, her, or them in that behalf provided, and shall immediately, or so soon as the same shall be filled, carry and convey all such trays or baskets, with the flint-glass or wares laid or deposited therein as aforesaid, into the room by him, her, or them provided for such purpose, and shall place and deposit such trays or baskets, or the flint-glass or wares therein, in such room, and keep and continue the same therein until the officer shall have finally weighed and taken an account thereof for charge of duty; and if any maker or makers of flint-glass, who shall make or manufacture any such flint-glass as aforesaid, shall not so lay or deposit all such flint-glass, or the wares into which the same shall be made or manufactured, in such trays or baskets as aforesaid, or shall not immediately, or so soon as the same shall be filled, carry and convey every such tray or basket, with such glass therein, into such room as aforesaid, or shall not place or deposit such tray or basket, or the flint-glass or wares therein, in such room, or shall not keep or continue the same therein until the officer shall have finally weighed and taken an account thereof as aforesaid, all and every such maker or makers of flint-glass so offending shall for every such offence forfeit and lose the sum of 200*l.*: Provided always, that any officer or officers of excise shall be at liberty to weigh or take an account of all flint-glass brought into or deposited in such room, in such manner and at such times as he or they may think fit. Makers to deposit the flint-glass or wares not requiring to be annealed in trays or baskets, to be provided by them, and to convey the same into the room provided for that purpose as soon as filled, under penalty of 200*l.*

§ 22. That all and every maker and makers of flint-glass shall, and he, she, and they is and are hereby required to keep sufficient and just scales and weights in such room as aforesaid, and shall, at his, her, or their own expense, find, provide, and affix within such room fit and proper hooks or staples, and also permit and suffer any officer or officers of excise at any time to use the same for the purpose of weighing and taking an account of and re-weighing in such room the flint-glass, as he may think fit, which shall at any time be deposited therein; and if any such maker or makers shall neglect to keep such scales and weights, or either of them, or shall not at his, her, or their own expense find, provide, and affix in manner aforesaid such fit and proper hooks or staples as aforesaid, or shall not permit or suffer any officer or officers of excise to use the same, such maker or makers shall for each and every such offence forfeit and lose the sum of 100*l.*; and if any such maker or makers shall, in the weighing or re-weighing of any such flint-glass, make use of, or cause or procure or suffer to be made use of, any false, unjust, or insufficient scales or weights, or *shall practise any art, device,* or contrivance, by which Flint-glass makers to provide scales and weights in the room for unannealed glass. Penalty, 100*l.* Making use of false scales.

6 Geo. 4. c. 117.

Penalty, 500*l.*

any such officer or officers may be hindered or prevented from taking the just and true weight of any such flint-glass, then and in every such case such maker or makers shall, for each and every such offence, forfeit and lose the sum of 500*l.*, with all such false, unjust, or insufficient scales and weights respectively, and the same shall and may be seized by any officer or officers of excise.

Workmen or servants maliciously adding materials to any pot after a gauge taken of it by the officer, or fraudulently removing flint-glass, may be imprisoned for three months and kept to hard labour.

§ 23. Reciting, that by an act passed in the 34th year of the reign of his said late majesty King *George* the third, for granting to H. M. certain additional duties on glass imported into or made in *G. B.*, it is enacted, that if any workman or servant of, or any other person employed by, any maker or makers of glass shall, after a notice in writing has been given as aforesaid by such maker or makers of glass, of the filling or charging any pot with metal, materials, or preparation for the making of glass, and after a gauge taken by the officer of the metal, materials, or preparation in such pot, put into such pot any metal, material, or preparation whatsoever, without a fresh notice in writing, every such workman, servant, or other person shall, for every such offence, be subject to a certain pecuniary penalty therein mentioned; and that such penalty has been found insufficient to deter such persons from committing such offence, and it is expedient in cases of flint-glass to impose a severer punishment on them for so doing, if done maliciously, and with intent to injure such maker or makers of flint-glass; it is therefore enacted, that if, from and after the said 5th day of *July*, 1825, any workman or servant of, or other person employed by, any maker or makers of flint-glass shall, after a gauge taken by any officer of excise of the materials or metal, or other preparations for the making of flint-glass, in any pot set in the furnace, maliciously, or with intent to injure such maker or makers, add to or put into any such pot any fresh material, metal, or other preparations, or if any such workman, servant, or other person shall maliciously, and with such intent as aforesaid, remove, hide, or conceal any flint-glass, before the officer shall have taken an account thereof, and charged the duty thereon, every such work-

on the maker or makers of such glass as aforesaid, but that all and every such maker or makers shall still remain and continue liable to all and singular such penalty and penalties for any offence or offences by him, her, or them committed, contrary to this or any other act or acts of parliament, any thing herein contained to the contrary thereof notwithstanding; unless such maker or makers of flint-glass shall prosecute such workman, servant, or other person as aforesaid to conviction as aforesaid, and shall produce to the commissioners of excise a certificate of such conviction, and of the person so convicted having suffered or being in prison under such sentence, and suffering such punishment as aforesaid. 6 G. 4. c. 117.

No flint glass entitled to drawback which is of less specific gravity than 3.000, the specific gravity of water being taken at 1.000.

§ 24. That no flint-glass shall be entitled to the drawback by this act granted on the exportation thereof, unless such glass shall be of the specific gravity of 3.000, the specific gravity of water being taken at 1.000; and that all glass entered for exportation on drawback as flint-glass, which is of less specific gravity than 3.000 as aforesaid, shall be forfeited, and shall and may be seized by any officer or officers of excise.

No flint-glass not worth 11*d.* per pound entitled to drawback.

§ 25. That from and after the said 5th day of *July*, 1825, no flint-glass shall be entitled to the drawback by this act granted on the exportation thereof, unless such glass shall be worth 11*d. per* pound at the least, if for home consumption, at the time of such glass being entered for exportation; and that all glass entered for exportation on drawback, as flint-glass, which is of less value than as aforesaid, shall be forfeited, and shall and may be seized by any officer or officers of excise.

All glass packed up and deposited under the care of an excise officer, by July 5. 1825, shall be entitled to the former drawback on exportation within two months.

§ 26. Provided, that all glass which shall be packed up and enclosed in the packages in which such glass is intended to be exported, and which shall be sealed up by the excise-officer for that purpose, at any time before the said 5th day of *July*, 1825, shall be entitled to the drawback or drawbacks allowed on the exportation thereof by any act or acts of parliament in force on or immediately before the said 5th day of *July*, 1825: Provided always, that such glass shall be actually shipped for such exportation within two months next after the said 5th day of *July*, 1825, and shall be duly exported accordingly.

Flint-glass brought from Ireland into G.B. to be accompanied with certificate of the payment of the duty.

§ 28. Reciting, that no excise-duty upon flint-glass has hitherto been payable in *Ireland*, but a drawback has been paid in *G. B.* upon flint-glass made in *G. B.* and exported to *Ireland*; and that it is expedient, by reason of the imposition of duty by this act on flint-glass made in *Ireland*, that from and after the said 5th day of *July*, 1825, whenever any flint-glass shall be shipped in *Ireland* for removal to *G. B.*, it should be accompanied with a certificate that the duty imposed by this act has been charged and paid in *Ireland* for or in respect of such flint-glass, after a rate of not less than 6*d. per* pound, and to authorise the collectors and officers of excise in *Ireland* to charge and receive such duty before such shipment shall be made; it is therefore enacted, that from and after the said 5th day of *July*, 1825, all and every person and persons shipping or being about to ship in *Ireland* any flint-glass for exportation on drawback, or for the removal thereof to *G. B.*, shall give notice thereof to the nearest collector or officer of excise, and such collector and officer respectively is and are hereby authorised thereupon to attend and to cause all such flint-glass to be weighed; and if *such flint-glass has* not been made in Ireland,

6 G.4. c.117.

and charged with duty under the provisions of this act, to charge the same with duty after the rate of 6*d.* *British* currency for every pound weight thereof; and every collector and officer of excise in *Ireland* so attending upon such notice as aforesaid, and so taking an account thereof, is hereby authorised, before any such flint-glass shall be shipped in *Ireland* for exportation on drawback, or for removal to *G. B.*, shall, upon payment thereon of the duty aforesaid to such collector, or if such glass shall have been made and charged with duty under the provisions of this act, to grant a certificate of the payment of such duty, or that it is duly secured to be paid, to accompany such glass upon such removal as aforesaid; and if, from and after the said 5th day of *July*, 1825, any person or persons shall export upon drawback, or shall remove from *Ireland*, or bring into *G. B.* from *Ireland*, any flint-glass, without such duty thereon being paid or secured as aforesaid, or when removed into *G. B.* unaccompanied with such certificate, containing such particulars as aforesaid, or if any person or persons shall forge or counterfeit any such certificate, or shall make use of or deliver any false or untrue certificate, as and for the collector's certificate of such duty being paid or secured to be paid as aforesaid, on such glass, all such glass shall be forfeited, and shall and may be seized by any officer or officers of excise, and the person or persons so offending shall forfeit the sum of 500*l.*

Persons removing from Ireland flint-glass without the duty being secured, to forfeit 500*l.*

9 G.4. c.48. Plate-glass, broad glass, and crown-glass, exported from Ireland to foreign parts on drawback, or brought from Ireland into G.B., shall be accompanied with certificate

By stat. 9 *G.4. c.* 48. § 7. reciting that no excise-duty upon plate-glass, broad glass, and crown-glass has been payable in *Ireland*, under any act in force immediately before the passing of this act; but a drawback has been payable in *G. B.* upon plate-glass, broad glass, and crown-glass made in *G. B.* and sent to *Ireland*; for the preventing therefore of any evasion of payment of the duty on any such glass sent to *G. B.*, or any undue claim of drawback in respect of any such glass exported from *Ireland* to foreign parts on which duty shall not have been paid, it is enacted, that after the said 5th day of *July* 1828, every person shipping or intending to ship, or being about to ship, in *Ireland*, any plate-glass, broad glass

have been paid, or have been charged and duly secured to be paid, and he is hereby authorised and required to grant a certificate of the payment of such duty, or a certificate that such duty has been charged and is duly secured to be paid, to accompany such glass upon such exportation to foreign parts, or such removal to *G. B.*, and to be there produced as aforesaid; and if at any time after the said 5th day of *July*, 1828, any person or persons shall export or enter for exportation from *Ireland*, upon drawback, or shall remove or send from *Ireland* to be brought into *G. B.*, or shall bring into *G. B.*, any plate-glass, broad glass, or crown-glass, unaccompanied by such certificate, containing such particulars as aforesaid; or if any person or persons shall refuse to produce such certificate at the port of entry in *G. B.*, or shall forge or counterfeit any certificate required by this act, or shall make use of or deliver any false or untrue certificate as and for a certificate required by this act, all such glass respectively shall be forfeited, and shall and may be seized by any officer or officers of excise; and the person or persons so offending shall forfeit the sum of 500*l.*: Provided always, that if any plate-glass, broad glass, or crown-glass, which shall have been previously sent to *Ireland* from *G. B.* on drawback, shall at any time afterwards be sent or removed to *G. B.*, the rate of duty to be charged thereon as aforesaid shall be equal and according to the rate of drawback now payable thereon respectively when exported to foreign parts.

9 G.4. c.48.

Penalty on exporting without such certificate, 500*l.*

Proviso as to glass sent to Ireland from G. B., on drawback.

§ 8. It is enacted, that where by the schedule to this act annexed any drawback is allowed or made payable on any sort of glass exported, such drawback shall not be allowed or paid or given on any glass exported to the islands of *Jersey*, *Guernsey*, *Alderney*, *Sark*, or *Man*, or any of them, except in cases where the names of the said islands are expressly respectively mentioned or set forth, nor on any glass exported to any of the said islands, the name of which shall not be expressly mentioned and set forth.

No drawback allowed on export to Jersey, &c. unless expressly mentioned.

By stat. 49 *G.* 3. *c.* 63. § 5. (*a*) Every maker of spread-window glass or of crown-glass shall construct every annealing arch or oven by him intended to be used for the annealing of spread-window glass or crown-glass respectively in a rectangular form, with the sides and ends thereof perpendicular and parallel to each other respectively, and the bottom thereof level, and with only one mouth or entrance into the same, and shall number the same progressively, with a durable mark; and if any such maker shall construct any annealing arch or oven contrary to this act, or shall neglect or refuse to number or mark the same according to this act, or shall make use of any annealing arch or oven not constructed in the manner before directed, every such maker shall for every such offence forfeit 100*l.*

49 G.3. c.63. Spread-window and crown glass.

Directions for the construction of the annealing arch or oven.

Penalty for non-compliance, 100*l.*

By § 6. Every such maker shall, at his own expense, provide and affix a good and sufficient iron grating to the mouth or entrance of every annealing arch or oven by him intended to be used for the annealing of spread-window glass or crown-glass respectively, such iron grating to be approved of in writing under the hand of the respective surveyors or supervisors of the division or district within which it shall be situate, and proper locks and keys, and all other necessary fastenings for securing and sealing every

Iron grating to be affixed to the entrance of the annealing arch, and fastenings to be provided, &c.

(*a*) *Made perpetual and extended to U. K.* by stat. 9 *G.* 4. c. 48.

49 G. 3. c. 69.

such annealing arch and oven, and the mouth or entrance and iron grating thereof, shall be provided by the respective surveyors and supervisors, at the expense of such maker; and when such maker shall or ought to have delivered the declaration of the number of tables contained in any such annealing arch or oven, the proper officer shall immediately lock, fasten, and seal every such annealing arch or oven, &c., and shall keep the same locked, &c. until the glass shall be taken out in the presence of the proper officer, for the purpose of being weighed and charged; and if any such maker shall neglect or refuse, at his own expense, to provide such iron grating, or to affix the same as herein directed, before such annealing arch or oven shall be made use of as aforesaid, or to pay for any lock, key, or other necessary fastening which shall be provided by any surveyor or supervisor, according to this act, or if any person shall obstruct any officer, or any person by him employed in that behalf, in the fixing any such fastening in such manner as such officer shall think expedient, or in the locking, sealing, or securing any such annealing arch or oven, or the mouth or entrance or iron grating thereof, or any such fastening as aforesaid, or by any means whatsoever shall open any such lock or annealing arch or oven, or the mouth, &c. thereof, after the same shall have been locked, &c. before the same shall have been unlocked and opened by the proper officer, or shall wilfully break or damage any such lock, &c. every such maker or other person so offending shall for every such offence forfeit 100*l.*

Maker to deliver declaration of the number of tables deposited in the annealing arch, &c.

Penalty on neglect.

And by § 7. Where any locks, keys, or fastenings shall be provided in pursuance of this act, every such maker to whom such locks, &c. shall then belong shall, at his own expense, at all times when required so to do by the respective surveyors or supervisors, immediately set about altering, repairing, and amending, and shall also, within a reasonable time then next following, alter, &c. the same respectively according to such requisition; and if any such maker, &c. to whom any such locks, &c. or any of them shall belong, shall neglect or refuse immediately to set about the alter-

Locks and fastenings to be altered and kept in repair when required, on penalty of 50*l.*

of respectively judged of in every such annealing arch or oven; and no such maker shall at one time place or keep in any such annealing arch or oven any spread-window glass and crown-glass; nor shall any such maker place or keep any other sort of glass whatever in any such annealing arch or oven entered or used for the annealing of spread-window glass or crown-glass; and upon neglect or refusal to remove the same, so soon as the same shall be made or flashed, directly into such annealing arch or oven, or to place it as aforesaid; or if any such maker shall at one time place or keep in any such annealing arch or oven any spread-window glass and crown-glass, or any other sort of glass whatever, in any annealing arch or oven entered or used for the annealing of spread-window glass or crown-glass, he shall for each such offence forfeit 100*l.* 49 G.3. c.68. Penalty 100*l.*

By § 10. Before any such maker shall begin to close or stop up any annealing arch or oven containing any spread-window glass or crown-glass, he shall deliver to the proper officer a declaration in writing, specifying the true number of tables of spread or crown glass respectively deposited and contained in every such annealing arch; and upon neglect or refusal so to do he shall forfeit 20*l.* Before the annealing arch is closed a declaration of the number of tables shall be delivered on penalty of 20*l.*

By stat. 51 *G.* 3. *c.* 69. § 47. Reciting that whereas by 49 *G.* 3. c. 68. § 10. it is enacted, that before any maker of spread-window glass or crown-glass shall begin to close or stop up any annealing arch or oven containing any spread-window glass or crown-glass, he shall deliver to the proper officer a declaration in writing specifying the true number of tables of spread-glass or crown-glass respectively put and contained in each such annealing arch respectively; and if any such maker shall neglect to deliver such declaration in writing as last aforesaid, he shall for each such offence forfeit 20*l.*: And whereas it may sometimes happen that from errors in counting and otherwise, the true number of such tables respectively put or contained in any such annealing arch may be mistaken; it is enacted, that after the 1st day of *August* 1811, no such maker shall incur the said penalty of 20*l.* by reason of any declaration by him delivered as the declaration required by the said recited clause, not specifying the true number of tables so put and contained in any such arch, provided the number of tables respectively specified in such declaration so delivered shall not vary more than at and after the rate of five *per centum* from the true number of tables put or contained in such annealing arch. 51 G.3. c.69. No maker of spread-window glass or crown-glass to be liable to the penalty of 20*l.* imposed by 49 G.3. c.68. § 10. if the number of tables in any annealing arch does not vary more than 5 per cent. from the number specified in the declaration.

By § 11. Every such maker, &c. shall keep sufficient and just scales and weights at the place or places where he shall manufacture the same, and shall at his own expense provide and affix within such glasshouse, and within view of the annealing arches or ovens thereof, a proper hook or staple in a proper place, to be approved of in writing under the hands of the respective surveyor or supervisor, and also permit any officer to use the same for the purpose of weighing and taking an account of such glass as shall at any time be in the possession of such maker; and upon neglect to keep such scales and weights, and at his own expense to provide and affix such hook, &c., and upon not permitting or suffering any officer to use the same, he shall, for every such offence, forfeit 100*l.*; and if any such maker shall, in the weighing of any such spread-window glass or crown-glass, use or cause or suffer to be used, any false, unjust, or insufficient scales or 49 G.3. c.68. Scales and weights to be provided at the glasshouse. Penalty for neglect, 100*l.*

49 G.3. c.68.

weights, or shall practise any contrivance by which any such officer may be hindered from taking the true weight thereof, in every such case he shall forfeit 500*l.* with all such false scales and weights respectively, and the same may be seized by any officer of excise.

Notice to be given before any glass is drawn from the annealing arch, &c.

And by § 12. Every such maker, being desirous to draw any spread-window glass or crown-glass from out of any annealing arch or oven to him belonging, shall, by the space of twelve hours next before the beginning to draw, give to the officer of excise a notice in writing of his intention, specifying each particular arch or oven, and the number thereof, out of which it is intended to take such glass, and the particular time and hour at which it is so intended to begin to draw; and upon such notice being given, such officer shall attend at the time mentioned in such notice, and shall open such annealing arch and oven for the purpose aforesaid, and such officer shall attend to see the whole such glass drawn, and such maker shall immediately on such officer's attendance begin to draw, and shall continue without any unnecessary delay to draw every part thereof; and such maker shall, immediately on such glass being so drawn, weigh the whole with such scales and weights as aforesaid, in the presence of such officer; and such maker shall be charged with and shall pay the duty for such glass according to such weight; and if any such maker, having given such notice and begun to draw as aforesaid, shall not so continue to draw and to weigh as herein-before directed, he shall for every such offence forfeit 100*l.*; and if any such maker shall neglect or refuse to begin to draw from his annealing arch or oven, immediately after such arch or oven, and the mouths or entrances and iron gratings thereof, shall be opened by such officer, then such notice shall be void, and such officer shall immediately lock up, fasten, and seal each and every such arch or oven, and the mouth, &c. as aforesaid, and such maker shall give the like notice to such officer before any such annealing arch, &c. &c. shall be again open: Provided always, that no such

Penalty on neglect, &c.

[redacted]

or shall remove or convey, or cause or suffer to be removed or conveyed, from such place as aforesaid, any spread-window glass or crown-glass, before the end of six hours next after such weighing as aforesaid, unless the same shall have been sooner weighed or re-weighed, he shall for every such offence forfeit 100*l*. 49 G.3. c.68.

And by § 15. Every such maker shall, so often as he shall be required by the officer of excise under whose survey he shall then be, with a sufficient number of his servants, assist to the utmost of his power such officer, or surveyor or supervisor, in weighing and taking an account, or in re-weighing and taking an account of all such glass, on pain of forfeiting, for every neglect or refusal, 100*l*. Makers to assist officers in weighing, on penalty of 100*l*.

By § 16. If any such maker shall convey away any spread-window glass or crown-glass from any annealing arch or oven before the proper officer shall have weighed the same, or shall neglect or refuse to produce any such glass to such officer, that he may weigh according to this act, he shall for every such offence forfeit 100*l*. Penalty on conveying glass from the annealing arch before it is weighed, 100*l*.

By § 17. Every such maker shall at all times keep all spread-window glass or crown-glass in his custody, and which shall not have been weighed by the officer of excise according to the directions of this act, separate from all spread-window glass and crown-glass respectively, which shall have been weighed, and from all other glass wares whatsoever, upon pain of forfeiting 100*l*. Glass to be kept apart till weighed.

By § 18. If any such maker shall, for the annealing of any such glass, use any private or concealed annealing arch, oven, utensil, or place whatever, other than his known annealing arch entered for that purpose; or if any such maker shall fraudulently remove away any spread-window glass or crown-glass before the same shall have been weighed by the proper officer, or shall fraudulently hide any such glass, every such maker shall forfeit 100*l*. Makers not to use any but an entered annealing arch, or remove glass which has not been weighed, &c. Penalty 100*l*.

By § 19. If any maker of spread glass shall manufacture within the same glasshouse or building, by him entered or used for the manufacturing of spread-window glass, or in any glasshouse or building adjoining thereto, any other species of glass or glass wares; or if any maker of crown-glass shall manufacture within the same glasshouse or building by him entered or used for the manufacturing of crown-glass, or in any glasshouse or building adjoining thereto, any other sort of glass or glass wares, except plate-glass as aforesaid, every such maker shall, for every such offence, forfeit 50*l*. Penalty 50*l*.

By § 20. If any officer of excise shall have cause to suspect that any spread-window glass or crown-glass respectively shall have been fraudulently conveyed away before the same shall be weighed by the proper officer according to this act, and shall be lodged in any place whatsoever, then if such place shall be within the cities of *London* or *Westminster*, or within the limits of the chief office of excise in *London*, upon oath made by such officer before any two of the commissioners, or if elsewhere, before one justice for the county, riding, division, or place, where such officer shall suspect the same to be lodged or concealed, setting forth the ground of his suspicion, it shall be lawful for them respectively, as the case may require, before whom such oath shall be made, if it be judged reasonable, by special warrant, to empower such officer by day or by night, but if in the night-time in the presence of a constable or other officer of the peace, to enter For recovering glass fraudulently conveyed away.

49 G.3. c.68. into every such place where he shall so suspect such to be deposited or concealed, and to seize and carry aw such glass which he shall then and there find so deposit concealed as forfeited; and if any person whatsoever shall ob any such officer so authorised, or any other person acting aid in the execution of such warrant, from entering any place where such officer shall so suspect such glass to be so sited or concealed, or in seizing or carrying away the same, the due execution of any such warrant, the person shall, for such offence, forfeit 100*l.*

Penalty on persons obstructing the recovery, 100*l.*

Penalty on obstructing officers, 300*l.*

And by § 21. If any person shall obstruct any officer of in the execution of any of the powers to him given by this other act relating to glass, the person so offending therein for every such offence, other than for those for which any p is herein-before specially imposed, forfeit 300*l.*: Provided a that nothing in this act shall make it unlawful for any offi excise at all times to inspect, gauge, or otherwise to ta account of the metal and materials mixed and prepared or fo or founding for the making of glass in any such glasshou building as aforesaid, as well before such metal or material be put into any pot or pots, as after the same shall be put int pot or pots, or to take a sample or samples, not exceedin ounces in the whole, out of each such pot or any other ves utensil containing such preparation for making glass.

Penalties and forfeitures how to be levied.

By § 22. All fines, &c. by this act imposed shall be sue &c. as any fine, &c. may be sued for, &c. by any law of exc by action, &c. in any of H. M.'s courts of record at *Westmi* and one moiety shall be to H. M., and the other to him, he them who shall discover, inform, or sue for the same.

By § 23. Powers of former acts extended to this act.

56 G.3. c.108. Thickness of glass not declared to be

By stat. 56 *G.*3. *c.*108. § 6. No crown-glass or *German* s glass, or broad or spread window-glass, shall be made in U. K. of greater thickness in the foot superficial, and exclusi the centre or bullion, and selvage or rim thereof, than one

[redacted]

time mentioned in such notice, or within one hour after, such notice shall be void, and he shall be obliged to give a fresh notice; and if after the shipping any such glass the same shall be re-landed, or put into any other vessel within *G. B.* (shipwrecked, &c. excepted), the same shall be forfeited, or the value thereof, over and above the penalty of the bond given on exportation, and may be seized by any officer of excise or customs. 26 G.3. c.77.

By stat. 19 *G.* 2. *c.*12. § 14. Every maker shall keep just scales and weights at the place where the glass is made, and assist the officer in weighing, on pain of 50*l.* 19 G.2. c.12. Maker to keep scales and weights.

And by stat. 10 *G.* 3. *c.*44. § 15. If he shall make use of insufficient scales or weights he shall forfeit 100*l.*, but not to be prosecuted both on this and the former act. And by 28 *G.* 3. *c.*37. the same shall be forfeited, and may be seized by any officer of excise. 10 G.3. c.44

By stat. 26 *G.* 3. *c.*77. § 8. If in weighing his stock he put any other substance therein, whereby the officer may be hindered or impeded from taking a just account, or shall forcibly obstruct such officer, he shall forfeit 100*l.* 26 G.3. c.77. Deceiving or obstructing the officer.

And by stats. 19 *G.* 2. *c.* 12. and 17 *G.* 3. *c.*39. § 37. If any maker or other person shall obstruct any officer in securing the duties, he shall forfeit 50*l.* 19 G.2. c.12. 17 G.3. c.39.

By stat. 54 *G.* 3. *c.*97. § 8. If any person shall assault, oppose, obstruct, or hinder any officer of excise in the execution of the powers given by this act, or shall, by force or violence, after any such officer shall have seized any common-glass bottles, or other bottles, as common-glass bottles forfeited under this act, rescue or cause to be rescued, or shall break, damage, or destroy any such bottles, or shall attempt so to do, he shall forfeit 100*l.* 54 G.3. c.97.

By stat. 17 *G.* 3. *c.*39. § 38. No person concerned in the glass trade, or in any glasshouse, shall act as a justice in any matter relating to these duties. 17 G.3. c.39.

Muriate of Potash.

[53 Geo. 3. c. 97.]

By stat. 53 *G.* 3. *c.*97. § 1. It shall be lawful for any maker of glass to deliver from any warehouse, &c. entered by him, to any maker of alum, any muriate of potash, for the purpose of being used in the manufacture of alum, upon bond or security being given by such maker of alum, in double the duty of such muriate, that all such muriate shall be really and truly employed, spent, and consumed by such maker of alum in the manufacture of alum; which bond or security shall be discharged, upon the said maker of alum, or his agent or chief workman, making oath before the collector of excise of the collection in which the alum-works to which such muriate shall be permitted shall be situated (which oath such collector is to administer), that all the said muriate for which such bond shall have been given was made use of in the manufacture of alum there, and for no other purpose whatsoever; and the supervisor or officer of excise, under whose survey such maker of alum shall then be, at the same time certifying his belief of the truth of the matters so sworn to. 53 G.3. c.97. Glass-makers may deliver from entered warehouses muriate of potash to be used in the making of alum.

§ 2. Before any maker of alum shall be permitted to receive any muriate of potash, such maker shall make true and particular entry Alum-makers to make entry

53 G. 3. c. 97.

of places for keeping potash.

in writing of every workhouse, &c. by him intended to be u
or for the keeping of muriate of potash, and for the using t
in the manufacture of alum, at the office of excise within the
pass or limits whereof such workhouse, &c. respectively sh
situate; and if any such maker shall receive any such muri
potash without having first made such entry, he shall for
such offence forfeit the sum of 100*l.* together with all the m
of potash found in any workhouse, &c. whereof no such en
last aforesaid shall be made.

Samples may be taken by the officer.

§ 7. And any officer of excise may take at any time a sam
any muriate of potash, or other materials alleged to be muri
potash, in the possession of any glass-maker, or of any alum-n
paying for the same (if demanded) the value thereof; and i
glass-maker or any maker of alum shall refuse to permit
officer to take such sample, he shall forfeit 100*l.*

Permits to be granted for the removal of muriate of potash.

§ 8. Where any glass-maker shall have occasion to remo
muriate of potash from any such workhouse, &c. for the m
or keeping mineral alkali or flux for glass, the officer of
shall, without fee, upon a request note being delivered to h
such glass-maker, give a permit in writing, signed by him, ex
ing the quantity so to be removed, and the name of the p
from whom and to whom the same is to be removed, and th
duty in respect thereof has been paid; and the officer shall t
limit the time within which the same shall be removed fro
premises, and within which the same shall be delivered a
ceived into the premises of the maker of alum.

Note specifying certain particulars to be delivered before permits are granted.

§ 9. No permit for the removal of muriate of potash sh
granted, or be valid, unless the maker requiring the sam
send to the officer of excise authorised to grant such pe
request note in writing, specifying the name of the maker o
to whom it is to be sent, the quantity to be removed, the n
and contents of the casks or other packages containing the
and whether to be removed by land or by water, and by

[redacted]

agent, before the proper collector or supervisor of excise, who shall administer such oath; and in case of neglect to keep such book or paper, or to make such entries, or to return the same, or to verify the said entries upon oath, such maker of glass shall forfeit 100*l.* 53 G. 3. c. 97.

§ 14. Every such maker of glass shall, within one week after he shall have or ought to have made such entry, pay off all duties for muriate of potash due from him; on pain of forfeiting double the said duties. Duty to be cleared in a certain time.

§ 15. The officers of excise, at all times, by day and by night, (but if in the night, in the presence of a constable or other peace-officer,) may enter into every workhouse, &c. or place used by any maker of glass or alum for storing or keeping of muriate of potash, or other matter alleged to be, or passing under the denomination of muriate of potash, and by weighing or otherwise, to take an account of the quantity and quality which shall at any time be in the possession of such maker. Power of officers to enter premises.

§ 16. Every maker of glass, and every maker of alum, shall keep just scales and weights at the place where he shall keep any muriate of potash, and at his own expense find and affix a proper hook or staple in a proper place, to be approved of under the hands of the surveyor or supervisor of excise of the district, and also permit any officer of excise to use the same, for the purpose of weighing and taking an account of the muriate of potash in the possession of any such maker; and if any such maker shall neglect or refuse so to do, or shall, in the weighing muriate of potash, use or cause or suffer to be used, any false or insufficient scales or weights, or shall practise any art or contrivance by which the officer may be hindered from taking the just weight, and ascertaining the true quantity, every such maker of glass, or of alum (as the case may be), shall forfeit 100*l.* together with all the false or insufficient scales and weights. Scales and weights to be provided, to take an account of the weight of the muriate of potash.

§ 17. Every maker of glass, and every maker of alum shall, when required by the proper officer of excise, with a sufficient number of his servants, assist to the utmost of his power such officer in weighing and taking such account, on pain of forfeiting 100*l.* Makers to assist in taking an account of the weight.

§ 18. If any person shall remove or carry away any muriate of potash, with intent to evade the duty, he shall forfeit 50*l.*, and all the muriate of potash so taken, &c. Penalty on removing muriate of potash to evade duty.

§ 19. If any muriate of potash shall be deposited or concealed, with an intent to defraud the king of the duties, it shall be forfeited, and may be seized by any officer of excise, and the person in whose custody it shall be found shall forfeit 100*l.*; and if any such officer shall have cause to suspect that muriate of potash shall be so deposited or concealed in any place whatsoever, if such place be within the limits of the chief office of excise in *London*, upon oath made by such officer before the commissioners of excise, or any two of them, or before one justice of the county, city, or liberty where such place shall be, or in case such place shall be in any other part of *G. B.*, upon oath made by such officer before one justice for the county, &c. where such officer shall suspect the same to be deposited or concealed, setting forth the ground of his suspicion, it shall be lawful for such commissioners or justice respectively, *if they judge it* reasonable, by special warrant, *under their respective hands and seals*, to authorise such Penalty on concealing potash. Power to search suspected places.

53 G. 3. c. 97.

officer, by day or by night, but if in the night-time, then in the presence of a constable or other peace-officer, to enter into every such place where he shall so suspect such muriate of potash to be so deposited or concealed, and to seize and carry away all such muriate of potash which he shall then and there find so forfeited.

Muriate of potash from glass-houses to be used only in the manufacture of alum.

§ 20. If any maker of alum, on whose account any muriate of potash shall be delivered from any maker of glass, or if any other person shall use such muriate of potash, or any part thereof, for any other purpose than in the manufacture of alum; or shall, after any such muriate of potash shall have been used in the manufacture of alum, use the *residuum*, *caput mortuum*, or remains thereof, for any other purpose than in the manufacture of alum, such maker or other person shall forfeit 100*l*.

Proof of muriate of potash to lie on the owner.

§ 21. If any question shall arise whether any substance, matter, or material, seized as muriate of potash forfeited under this act, be muriate of potash, the proof of the same not being muriate of potash shall lie upon the owner or claimer thereof.

How muriate of potash shall be weighed.

§ 22. In all cases where any officer of excise is authorised or required to ascertain the quantity of muriate of potash by weight, no less quantity shall be weighed at one draft than 1 cwt.; and every such officer, in the weighing, shall give the turn of the scale in favour of the crown, and in lieu thereof shall make an allowance at the rate of 5lbs. in every half ton.

Penalty on persons obstructing officers.

§ 23. If any person shall assault, resist, oppose, molest, obstruct, or hinder any officer of excise in the due execution of this act, or shall by force or violence, after any such officer shall have seized any muriate of potash, or any substance or material as or for muriate of potash forfeited under this act, rescue or cause to be rescued any such muriate of potash, or substance, &c., or shall attempt so to do, every such person shall forfeit 100*l*.

Penalty on bribing officers.

§ 24. If any person shall give or offer to give any bribe or reward to any officer of excise, in order to corrupt such officer, either to do contrary to his duty, or to neglect to do any act he

By stats. 43 G. 3. c. 69. 45 G. 3. c. 94. and 59 G. 3. c. 52. in lieu of any duties of excise then subsisting, new duties were imposed. 43 G. 3. c. 69. &c. Duties. Excise.

Note.—These duties are now collected and recoverable pursuant to the general regulations and provisions of the new excise act, 7 & 8 G. 4. c. 53., *ante*, p. 60. *et seq.*

By stat. 6 G. 4. c. 111. all former duties of *customs* were repealed, and new duties imposed; *inter alia*, a duty of 8*l.* 11*s.* *per* cwt. upon hops imported. 6 G. 4. c. 111. Customs.

By stat. 7 G. 2. c. 19. § 1. If any foreign hops shall be landed before entry and duty paid, or without warrant for landing, the same shall be forfeited, and burnt in ten days after condemnation, and the ship also shall be forfeited, and the person concerned in importing, or aiding in putting them on shore, shall forfeit 5*s.* for every pound weight. 7 G. 2. c. 19.

By stat. 26 G. 3. c. 5. § 1, 2. 4. Hops of *British* growth may be exported to *Ireland*, bond being first given to the commissioners of excise that the said hops shall not be re-landed, and oath made before such person as they shall appoint, that the duties have been duly charged, whereupon the person exporting the same shall have a drawback of the duties before paid; and provided the said hops shall be re-landed, or put into any ship in G. B. (except in case of shipwreck or unavoidable accident), the same, or the value thereof, shall be forfeited, over and above the penalty of such bond; and may be seized by any officer of the customs or excise. 26 G. 3. c. 5. Exportation to Ireland.

By stat. 1 & 2 G. 4. c. 100. § 1. There shall be allowed for every pound weight avoirdupois of hops grown, cured, and made fit for use in G. B. and exported, from and after the 12th of *January*, 1821, as merchandise to foreign parts, the whole of the excise duty paid thereon. 1 & 2 G. 4. c. 100. A drawback of the excise-duty to be allowed on the exportation of hops.

§ 2. All such hops shall be exported as aforesaid in the original package and packages in which the same were charged with duty, each such package containing at the least one hundred weight of such hops, under and subject to the several provisions contained in stat. 26 G. 3. c. 5., for regulating the exportation of hops to *Ireland*, and other acts relating to the exportation of any goods subject to a duty or duties of excise, upon drawback; and all the rules, regulations, restrictions, provisions, fines, penalties, and forfeitures, contained in the said act and acts, shall be applied and put in execution in respect of the exportation of hops to foreign parts, so far as such rules, &c. are applicable, as fully as if the same were repeated and again enacted in this act. Hops to be exported in the original package containing not less than 1 cwt., subject to the regulation of 26 G. 3. c. 5., &c.

And by stat. 43 G. 3. c. 69. *sched.* (A.) and 45 G. 3. c. 94. for every pound weight avoirdupois of hops grown in G. B. which shall be cured and made fit for use, shall be paid by the owner or possessor thereof, a duty of 2*d.* 43 G. 3. c. 69. 45 G. 3. c. 94. Home-duty.

In order whereunto, by stat. 9 *Ann.* c. 12. § 6. Every person who shall plant or have growing any hops for sale, or not for sale, shall yearly, on or before *August* 1. give or send notice in writing under his hand, at the next office of excise, or to the officer of the district, of all the hop-grounds in his possession, and of the name of the parish, township, or place, and the name of the owner or occupier; on pain of 40*s.* an acre. 9 Ann. c. 12. Hop-grounds to be entered.

§ 7. But such person shall not be obliged, for giving notice, to go further than the next market-town.

The officer *who shall receive the notice* shall, in five days, enter

9 Ann. c. 12. the same in a book to be kept at the office for that purpose, on pain of 40*s*.

Places of curing and keeping to be entered. § 8. No person shall use any ousts, storehouse, or other place, or any kiln for curing or keeping of hops, unless notice thereof shall have been given, on pain of 50*l*.

§ 9. And all hops shall in six weeks after gathering or picking, be brought to be cured and bagged at such ousts or other places notified, and no other, on pain of 5*s*. a pound.

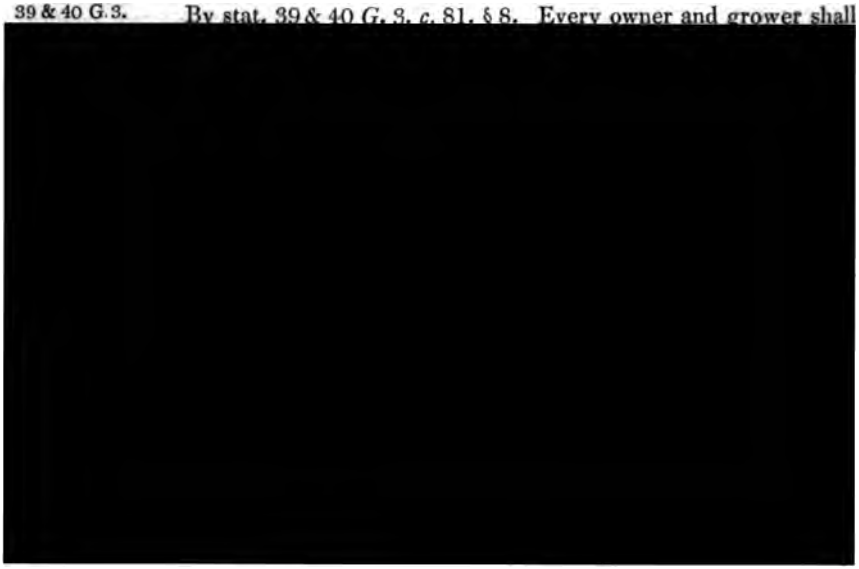
Officers to enter and survey. § 15. The officer shall at all times, by day or night, and if in the night in the presence of a constable, be permitted on his request to enter into the oust, storehouse, or other place, used by any person for growing, curing, or keeping hops; and if the planter or owner obstruct him, he shall forfeit 20*l*.

6 G. 1. c. 21. Notice of bagging and weighing. By stat. 6 *G.* 1. *c.* 21. § 25. The owners of hops, before they respectively begin to bag or weigh their hops, shall send notices in writing under their hands to the next excise-officer or officer for the duty, of the day and hour of beginning either to bag or to weigh; which notice, as to such as shall be bagged or weighed the first week, shall be given twenty-four hours before; and as to every other bagging or weighing, forty-eight hours, on pain of 50*l*.

39 & 40 G. 3. c. 81. Notice of weighing. But by stat. 39 & 40 *G.* 3. *c.* 81. § 6. No such owner, planter, or grower, shall be obliged to give more than twenty-four hours' notice of his intention to weigh hops; provided that the particular time be specified in such notice, which shall be between the hours of four in the morning and five in the evening.

9 Ann. c. 12. Officers to make entry, &c. And by stat. 9 *Ann. c.* 12. § 11. The officer shall cause an entry of the said weight to be made in his book, and shall make return thereof in writing to the commissioners, or to whom they shall appoint, leaving a true copy (if demanded) of such return, under his hand, with the planter or owner; and if he shall neglect or refuse to leave such copy (after demand in writing, 12 *G.* 1. *c.* 28. § 30.) he shall forfeit 5*l*.

39 & 40 G. 3. By stat. 39 & 40 *G.* 3. *c.* 81. § 8. Every owner and grower shall



durable ink or paint, his name and place of abode, on pain of forfeiting 20*l*. 39 & 40 G.3.

§ 3. No hops shall be bagged into any bag of greater weight than in the proportion of 10lb. for every 112lb. of the gross weight of bags and hops, on pain of forfeiting 20*l*. Weight of the bags.

§ 4. When the officer of excise shall have weighed and taken an account of any hops for the purpose of charging the duty thereon, he shall mark in like manner on every bag or pocket, the gross weight thereof, together with the year in which such hops were grown, and the progressive number, according to the number of bags charged to each owner, planter, or grower in each such current year. And if any person shall counterfeit or alter any such marks, or procure the same to be done, he shall forfeit 100*l*. for every such offence. And if any person shall wilfully deface or obliterate any mark hereby directed to be made, or cause the same to be done, or connive thereat, he shall forfeit 20*l*. Officer to mark the gross weight on the bag. Penalty on counterfeiting such mark, or defacing the same.

By stat. 6 *G.* 1. *c.* 21. § 27, 28. The owners may, if they think fit, put the hops into casks instead of bags, giving the like notice, and being subject to the same regulations for casking as for bagging. 6 G.1. c.21. Hops may be put into casks instead of bags.

And the officer shall cause the casks to be weighed, and the weight to be marked on the casks, and also the weight of the hops therein.

By stat. 48 *G.* 3. *c.* 134. it is enacted, that in addition to the marks required to be made on the outside of every bag and pocket of hops, there shall be marked by the owner, planter, or grower of hops, in the form and manner in which the before-mentioned particulars are required to be marked, the name of the parish and of the county in which the hops put into any such bags or pockets were or shall be grown; and if any owner, &c. shall put hops into any bag or pocket, before the same shall have been marked as by this act required, he shall for each such offence forfeit 20*l*. 48 G.3. c.134.

§ 2. If any person shall counterfeit, or remove, alter, erase, or obliterate, or cause to be counterfeited, removed, altered, erased, or obliterated, any of the marks required by this act, or any other act in force, to be put on bags or pockets of hops, he shall forfeit 20*l*.

By § 3. These penalties to be recovered as other penalties may by the excise-laws be recovered; one moiety to the king, and one to the informer.

By stat. 54 *G.* 3. *c.* 123. § 1. Every owner, planter, or grower of hops, before he begin to put hops into any bag or pocket, shall mark on the outside of each bag, in large and legible letters of four inches in length, and half an inch in breadth; and on the outside of every pocket, in large and legible letters of three inches in length, and half an inch in breadth, with durable ink or paint, his name, and the parish and county in which the hops were grown; and if any owner, planter, or grower of hops, or other person, shall put hops into any bag or pocket, without having marked thereon the things herein required, or shall, before or after such hops have been packed, mark thereon the name of any other person, parish, or county than as herein prescribed, or the symbol appertaining to any other county or place, the owner, planter, or 54 G.3. c.12. Growers of hops not to put any name or place of abode than their own on bags or pockets.

54 G. 3. c. 12. grower, or other person so offending, shall forfeit 20*l.* for every bag or pocket.

§ 2. If any owner, planter, or grower shall knowingly put hops of different qualities and value in the same bag or pocket, he shall forfeit 20*l.* for every bag or pocket.

9 Ann. c. 12. Deceit in bagging. By stat. 9 *Ann. c.* 12. § 23. No person shall take any hops of foreign growth out of the bags in which they are imported, and rebag the same in *British* bagging, in order to sell or export them as *British* hops, on pain of 10*l.* a hundred weight. And if any person shall endeavour to defraud the king of the duty, by using twice or oftener the same bag, with the officer's mark thereupon, he shall forfeit 40*l.*

Removal before bagging. § 16. No planter or owner shall (on pain of 50*l.*) remove or suffer to be removed from his oust, storehouse, or other place, any hops until they have been cured, bagged, and weighed, and the duties ascertained, unless where the officer, after notice, shall not attend the bagging and weighing.

39 & 40 G. 3. c. 81. Hops not to be removed for 12 hours, unless re-weighed by the supervisor. By stat. 39 & 40 *G.* 3. *c.* 81. § 5. No hops shall be removed from the place of weighing until twelve hours next after, unless the same shall have been re-weighed by the supervisor; and if upon any such re-weighing any additional weight shall be found, the same shall be charged with the duty; and if any such owner or grower shall convey or cause to be conveyed away any such hops, contrary to the meaning hereof, he shall forfeit 50*l.* for every such offence.

Obstructing officers. § 10. And every person who shall obstruct or hinder any officer of excise in the due execution of this act, shall forfeit 100*l.*

Concealing. § 17. If any planter or owner shall conceal any hops, to avoid the duties, he shall forfeit 20*l.* and the hops concealed.

9 Ann. c. 12. Privately conveying. By stat. 9 *Ann. c.* 12. § 18. If any picker or gatherer of hops, or other person, shall privately convey any hops from the place of growing, or where they shall be put in order to be cured, bagged, and weighed, with intent to defraud the king and the owner, he shall forfeit 5*s.* a pound.



on pain of 20*l.* (except the infusing of broom or wormwood into beer or ale by the retailer, after it is brewed and tunned, to make it broom or wormwood ale or beer.) And see tit. **Ale and Beer**, *ante*, p. 142—146. 9 Ann. c. 12.

The penalties aforesaid (where not otherwise directed) shall be recovered and mitigated as by the laws of excise (*a*), and distributed half to the king and half to him that shall sue. 9 *Ann.* c. 12. § 26. — 24 *G.* 2. *c.* 42. § 29. — 26 *G.* 3. *c.* 5. § 8. — 39 & 40 *G.* 3. *c.* 81. § 11. Penalties, how to be recovered.

And by stat. 9 *Ann. c.* 12. § 19. All hops in the custody of any planter or owner, or persons in trust for him, shall be liable to the duties in arrear and to the penalties, in the same manner as if the debtor or offender were the lawful owner. 9 Ann. c. 12. Hops liable to distress for the duties and penalties.

By stat. 6 *G.* 2. *c.* 37. § 5, 6. If any person shall unlawfully and maliciously cut any hop-binds growing on poles in any plantation of hops, he shall be guilty of felony. 6 G. 2. c. 37. Cutting hop-binds.

And by stat. 4 *G.* 4. *c.* 46. § 1. He shall be liable, at the discretion of the court, to be transported beyond the seas for life, or for any term not less than seven years, or to be imprisoned only, or to be imprisoned and kept to hard labour in the common gaol or house of correction, for any term not exceeding seven years. 4 G. 4. c. 46. Offenders to be liable to transportation.

§ III. (9.) Leather. (*b*)

[2 Ann. c. 11.—9 Ann. c. 11.—5 G. 2. c. 2.—5 G. 3. c. 43.—10 G. 3. c. 44. — 15 G. 3. c. 35. — 24 G. 3. sess. 2. c. 41. — 26 G. 3. c. 77. — 28 G. 3. c. 37. — 31 G. 3. c. 43. — 34 G. 3. c. 63. — 35 G. 3. c. 97. — 38 G. 3. c. 54. — 41 G. 3. (U. K.) c. 91. — 43 G. 3. c. 69. — 52 G. 3. c. 143. — 55 G. 3. c. 30. — c. 69. — 56 G. 3. c. 110. — 59 G. 3. c. 32. — 3 G. 4. c. 27. — c. 83. — 5 G. 4. c. 55. — 6 G. 4. c. 111. — 7 & 8 G. 4. c. 53.]

By stat. 43 *G.* 3. *c.* 69. A duty is laid upon all hides and skins, vellum, and parchment tanned in *G. B.*; and other duties are also imposed by 49 *G.* 3. *c.* 98. and 52 *G.* 3. *c.* 94. 43 G. 3. c. 69. Duties.

By stat. 3 *G.* 4. *c.* 83. From and after the 5th of *July*, 1822, the several additional duties of excise on hides and skins, and parts and pieces of hides and skins, and on vellum and parchment, and on leather manufactured into goods and wares, granted by stat. 52 *G.* 3. *c.* 94. were repealed. 3 G. 4. c. 83. Additional duties granted by 52 G. 3. c. 94. repealed.

§ 2. From the 5th of *July*, 1822, the several *drawbacks* granted and allowed by stat. 56 *G.* 3. *c.* 110., and also the said act, were repealed. 56 G. 3. c. 110. Drawbacks repealed.

§ 3. New drawbacks on *exportation* were enacted. New drawbacks on exportation.

§ 4. The same to be paid and allowed in like manner as former drawbacks, except as altered by this act.

By stat. 5 *G.* 4. *c.* 55. § 1, 2, 3. The duties and drawbacks on hides, skins, and leather, manufactured in *Ireland*, are assimilated to those payable on the like articles in *G. B.* and are placed under the control of the excise, § 6. 5 G. 4. c. 55. Irish leather.

By stat. 6 *G.* 4. *c.* 111. All former duties of *customs* were repealed, and new duties imposed. 6 G. 4. c. 111. Customs.

By stat. 3 *G.* 4. *c.* 83. § 5. If any tanner, tawer, or dresser of hides and skins in oil, or maker of vellum or parchment, shall 3 G. 4. c. 83. Penalty on tan-

(*a*) See *ante*, p. 60. *et seq.* (*b*) See also title **Leather**, Vol. III.

3 G. 4. c. 53.

ners, &c. concealing hides, &c., 200*l.*

remove or conceal any hide or skin, or part or piece of any hide or skin, or any vellum or parchment, with intent to evade the duty or duties of excise thereupon chargeable or payable, he shall, for every such offence, forfeit the sum of 200*l.*, to be recovered, applied, and accounted for as any other penalty under any law of excise.

Notice to be given to the excise-officer, before whom the hides, &c. shall be produced to be weighed and stamped, &c. and such hides shall be kept separate from others for 24 hours after charged with duty.

§ 6. Before any hides or skins, or pieces of hides or skins, or any vellum or parchment, shall be weighed or counted by any officer of excise, and charged with duty, or stamped or marked to denote such charge, the tanner, tawer, or dresser of hides and skins in oil, or maker of vellum or parchment, desirous of having the same so charged and stamped or marked, shall give notice in writing to the proper officer of excise, specifying the day and hour on which, and the number of hides and skins, parts or pieces of hides or skins, and skins or pieces of vellum or parchment, which he shall desire to be weighed or counted, and charged with, and stamped or marked to denote the charge of duty, and shall deliver every such notice to the proper officer 24 hours at the least, if the entered premises of such trader, &c. are situate within a market-town, and 48 hours at the least if such premises are situate without a market-town, before the hour for weighing or counting any such goods mentioned in such notice, and shall, before such weighing or counting shall be begun, place and produce all the hides and skins, &c. &c. specified in such notice, in an entered room, and in which no other hides or skins, or parts or pieces of hides or skins, vellum or parchment, shall then be, and shall from that time continue all such hides or skins, &c. &c. alone in such room for the space of 24 hours next after the same shall have been charged with duty, or stamped or marked, unless the same shall have been weighed or counted, or be sooner re-weighed or re-counted by a surveyor or supervisor, and shall not, during the time aforesaid, conceal or remove any hide or skin, or any such part or piece of any hide or skin, or any such vellum or parchment so weighed or counted and charged with duty or



imported for five years, duty free; which act is by 31 *G.* 3. *c.* 43. § 7. made perpetual. 15 G. 3. c. 35.

The said several duties for and upon all hides and skins, and parts and pieces of hides and skins, tanned, tawed, or dressed, to be paid by the tanners, tawers, and dressers of hides and skins respectively.

And the duties upon vellum and parchment to be paid by the respective makers thereof.

By *tanned* hides or skins, or pieces thereof, are meant only such as are tanned in wooze made of the bark of trees or shumack; and by hides and skins *dressed in oil* are meant such as are made into leather in oil, or with any materials whereof the chiefest ingredient shall be oil; and by *tawed* hides or skins, are meant such as are dressed or made into leather in alum and salt, or meal or other ingredients properly used by the tawers of white leather. 9 *Ann. c.* 11. § 3. 9 Ann. c. 11. What is meant by hides tanned, dressed in oil, and tawed.

[*N. B.*—By stat. 34 *G.* 3. *c.* 63. *Samuel Aston* is allowed to tan hides and skins in a particular manner, as mentioned in his letters-patent. And by stat. 35 *G.* 3. *c.* 97. All hides and skins tanned by the said method, or by any method whatever, shall be deemed to be within the meaning of the acts relating to the duties on hides and skins.]

By stat. 6 *G.* 4. *c.* 81. § 1. All former duties on excise-licences are repealed; and by § 2. new duties are imposed; viz. (*int. al.*) 6 G. 4. c. 81. Licences.

Every tanner - -	5*l.*
Every tawer - -	2*l.*
Every dresser of hides or skins in oil	4*l.*
Every currier - -	4*l.*
Every maker of vellum or parchment	2*l.*

And note, The several general regulations respecting the duties, fines, licences, &c. contained in this statute, are cited at length, *ante*, tit. Ale and Beer, p. 120. *et seq.* Note.

By stat. 2 *Ann. c.* 11. § 28. Collar-makers, glovers, bridle-cutters and others, who dress skins or hides, or pieces thereof, in oil, alum, and salt, or meal, or other ingredients, and who cut and make the same into wares, shall be accounted tawers or dressers. 2 Ann. c. 11. Who deemed tawers or dressers.

By stat 9 *Ann. c.* 11. § 3. Any hide or skin which hath once paid the duty, under one denomination, shall not be charged under any other denomination. 9 Ann. c. 11. No leather to be twice charged.

§ 13. 38. The commissioners of the treasury shall appoint commissioners of these duties, who shall have the same powers as the commissioners of the excise. Officers for these duties.

§ 15. Tanners, tawers, curriers, or dressers of hides or skins, and makers of vellum or parchment, shall give notice in writing to the officer of their names and places of abode, and of their tan-houses, yards, workhouses, mills, or other places, where they intend to tan, taw, or dress hides or skins, or make vellum or parchment, before they use the same, on pain of 50*l.* Places of working to be entered.

§ 17. And if any person shall not make due entry, and give account of the hides and skins, or shall use any private tan-yard, workhouse, pit, fat, mill, or place, he shall forfeit 20*l.* and the goods found in such private tan-yard, or place not entered, or the value thereof, shall also be forfeited.

§ 17. The officers, at all seasonable times in the day-time, may enter into *any tan-yard, workhouse,* warehouse, mill, or other Officers to enter and survey.

9 Ann. c. 11. place; and if the owner or occupier shall refuse him entrance, he shall forfeit 10*l.*

41 G. 3. c. 91. Hides found in unenteredplace. And by stat. 41 *G.* 3. (U. K.) *c.* 91. § 10. If any hide or skin tanned, tawed, or dressed in oil shall be found in any place (except on entered premises) without having thereon the stamp denoting the charging of the duty, the same shall be forfeited and seized; and the person in whose possession it shall be found shall for each offence forfeit 100*l.*

Penalty, 100*l.*

9 Ann. c. 11. Notice of removing to the place of drying. By stat. 9 *Ann. c.* 11. § 16. The said tanners and others shall give notice to the officer of their places for drying and keeping hides or skins, vellum or parchment, and they shall give two days' notice in writing to the officer, before they take the said goods out of the mill, wooze, liquor, oil, or other materials, or before the hanging up in order to be dried; and they shall permit the officers to take an account, and shall, in two days after the taking out of the wooze, mill, liquor, or other materials, and before the carrying away of the said goods from the place of drying, make entry with the officer of the number and quality, and verify the same on oath, to be administered by any justice or collector, or supervisor; and they shall not remove any of the said goods from the place of drying until the duty be first charged, entered, and marked.

Penalty for neglect. § 17. If any person shall not send such notice of taking the goods out of the wooze or other materials, or not make due entries, or remove any the said goods contrary to this act, he shall forfeit 20*l.* and such goods, or the value thereof.

Concealing to avoid the duty. § 17. If any tanner or other such person shall conceal any hide or skin, vellum or parchment, or any part thereof, he shall forfeit 20*l.* and also the goods concealed, or the value thereof.

Shaving hides. 56 G.3. c.110. § 12. Prohibits the shaving of hides before the same be thoroughly tanned, which provision is repealed by stat. 56 *G.* 3. *c.* 110. § 4. (*a*), which enacts, that it shall be lawful for any entered tanner to take out of the wooze and shave any hide or skin, or to cut and separate therefrom the thin parts: Provided, that such tanner shall

Notice to the proper officer [redacted]

not permit his hides or skins to be weighed, or neglect or refuse to bring them to the scales, or to assist at the weighing, he shall forfeit 50*l.* 9 Ann. c. 11.

By stat. 10 *G.* 3. *c.* 44. § 1. If he shall use false or insufficient scales or weights, he shall forfeit 100*l.*; but not to be prosecuted both on this and any former act; and by the 28 *G.* 3. *c.* 37. § 15. the same shall be forfeited, and may be seized by any officer. 10 G. 3. c. 44. Using false scales.

And by stat. 26 *G.* 3. *c.* 77. § 8. If in the weighing of stock he shall put any other substance therein, or shall forcibly hinder, or by any contrivance prevent such officer from taking a just account, he shall forfeit 100*l.* 26 G. 3. c. 77. Cheating or obstructing officers.

By stat. 9 *Ann. c.* 11. § 19. Tanners, and other the said persons, shall, before any the said goods be removed from the place of dressing, drying, or keeping, give two days' notice in writing to the officer (for giving of which notice he shall not be obliged to go further than the next market-town); and shall permit the officer to weigh the goods chargeable by weight, and bring the same to the scales, and assist in weighing; and shall permit the officer to take an account of the number and quality of the goods to be charged by tale; and shall ascertain the value of such goods as are to be charged *ad valorem*, by his oath, to be taken before a justice of the peace for the said officer. 9 Ann. c. 11. Duty to be ascertained before removal.

§ 20. And after the duties are ascertained by weight, tale, or value respectively, the officer shall enter the same in a book, and make return thereof to the commissioners, or to whom they shall appoint, leaving a true copy thereof, under his hand, with such tanner or other person. Charge by the officer.

§ 21. Immediately after the duty shall be ascertained, and entry thereof made, the officer shall cause every hide or skin, and every piece of a hide or skin, and all vellum and parchment, to be marked. Leather to be marked.

§ 22. If such tanner or other person shall desire the mark to be made on any particular part of the hide or skin, the officer shall mark it accordingly. In what part to be marked.

§ 26. If any tanner or other such person shall remove from his yard or drying-place any the said goods before the duty shall be charged, and before they be marked; or if any buyer shall carry away the same before they be marked, he shall forfeit 50*l.*; and the said goods so unlawfully sold or removed shall also be forfeited. Removing before marked.

By stats. 9 *Ann. c.* 11. § 44. 5 *G.* 1. *c.* 2. § 9. and 38 *G.* 3. *c.* 54. § 10. If any person shall counterfeit the stamp, or the impression of the same, or knowingly sell any of the said goods with a counterfeit stamp or impression, he shall be guilty of felony without benefit of clergy. 9 Ann. c. 11. 5 G. 1. c. 2. 38 G. 3. c. 54. Counterfeiting stamp.

By stat. 52 *Geo.* 3. *c.* 143. § 1. In all cases where any act committed in breach of any part of the laws for collecting the revenue would, by the laws in force, subject the offender to suffer death as guilty of felony without benefit of clergy, such act shall be deemed to be felony with benefit of clergy, and punishable only as such, unless declared to be felony without benefit of clergy by this act. 52 G. 3. c. 143.

To prevent frauds between the officers and dealers, by stat. 5 *G.* 2. *c.* 2. § 10. all tanners, tawers, and dressers of hides, skins, vellum, and *parchment, shall keep those which* have not been stamped 5 G. 2. c. 2. Leather stamped to be kept separate.

G. 2. c. 2.

from those which have, and also those which have been last stamped from those which have been stamped before, for 24 hours within the bills, and for two days elsewhere; unless they shall have sooner been weighed and taken account of by the surveyor or supervisor, on pain of 10*l.*

6 G.3. c. 110. Hides taken ut of the wooze o be hung up eparate from thers till an ccount is iken. 'enalty, 100*l.*

By stat. 56 *Geo.* 3. *c.* 110. § 6. Every tanner, tawer, or dresser of hides or skins, or pieces or parts of hides or skins, shall hang up such hides, &c. which he shall take out of the wooze for that purpose, separate from all hides, &c. hung up to dry, or taken out of the wooze for that purpose on any former day, and shall keep the same separate until the surveying officer shall have taken an account thereof, on pain of forfeiting the sum of 100*l.*

; G.3. c.43. Hides or skins ot to be re- noved till 24 ours after tamped.

And by stat. 5 *Geo.* 3. *c.* 43. § 21. No tanner, tawer, or dresser shall remove from his yard or drying-place, or from his entered store-rooms, any hides or skins, before the expiration of 24 hours from the stamping thereof, unless the same shall sooner have been weighed by the supervisor or surveyor, in order that they may have an opportunity to re-weigh the same after the inferior officers; and if any additional weight shall be found, the said hides or skins, or pieces thereof, shall be charged accordingly. And if such tanner, tawer, or dresser shall remove or cause or suffer the same to be removed contrary hereunto, he shall forfeit 20*l.*

§ 22. Every tanner, &c. shall keep scales and weights for such re-weighing, and bring the hides and skins and pieces thereof to the scales; and assist the surveyor and supervisor in re-weighing and examining from time to time the depending stock of such tanner, &c.; on pain to forfeit 50*l.*

) Ann. c. 11. Payment of the uties.

By stat. 9 *Ann.* *c.* 11. § 23. Persons within the bills of mortality shall pay off the duties in 14 days to the commissioners, and elsewhere in six weeks to the collectors, after the said goods shall be marked.

§ 24. But no person shall be obliged for payment of the duties, to go further than the next market-town.

§ 25. Persons not paying as aforesaid shall forfeit double duty,

[redacted]

may determine the same, and in case of conviction issue warrants for levying the penalties. 9 Ann. c. 11.

§ 47. And no *certiorari* shall be allowed. Certiorari.

Note. — See also the general powers and regulations for the recovery of excise-duties under the new excise-act. 7 & 8 *Geo.* 4. *c.* 53.; *ante*, p. 60. *et seq.*

§ III. (10.) Linen Cloths, Silks, Cottons, and Calicoes.

[10 Ann. c. 19. — 1 G. 1. st. 2. c. 36. — 5 G. 1. c. 11. — 7 G. 1. st. 1. c. 7. — 12 G. 1. c. 28. — 9 G. 2. c. 4. — 24 G. 2. c. 40. — 4 G. 3. c. 37. — 13 G. 3. c. 56. — 14 G. 3. c. 72. — 25 G. 3. c. 72. — c. 74. — 27 G. 3. c. 31. — 28 G. 3. c. 37. — 43 G. 3. c. 69. — 49 G. 3. c. 98. — 51 G. 3. c. 33. — 59 G. 3. c. 32. — c. 90. — 3 G. 4. c. 27. — c. 32. — 6 G. 4. c. 81. — c. 111. — 7 G. 4. c. 53. — 7 & 8 G. 4. c. 53.]

By stat. 43 *Geo.* 3. *c.* 69. § 1. All former duties of excise were repealed; and in lieu thereof other duties imposed upon all goods which shall be printed, stained, painted, or dyed in *G. B. Sch.* (A.) 43 G.3. c. 69. Duties. Excise.

The said duties to be paid by the printer, stainer, painter, or dyer thereof.

Note. — The excise-duties are now collected and recoverable pursuant to the general regulations and provisions of the new excise-act, 7 & 8 *Geo.* 4. *c.* 53. *ante*, p. 60. *et seq.*

By stat. 6 *Geo.* 4. *c.* 111. All former duties of customs were repealed, and new duties are imposed. 6 G.4. c.111. Customs.

By stat. 7 *Geo.* 4. *c.* 53. § 1. New duties of customs were imposed upon the importation of silk goods. 7 G.4. c.53.

§ 5. All excise-duties upon the printing of silks are repealed.

§ 6. Also the excise duties upon gold and silver wire, and gold and silver thread and lace spun upon silk, and so much of 10 *Ann.* c. 26. as relates to gold and silver wire.

By stat. 6 *Geo.* 4. *c.* 81. Every calico-printer, and every printer, painter, or stainer of linens, cottons, stuffs, or silks, shall pay annually for a licence 20*l.* 6 G.4. c.81. Licence.

By stat. 7 *G.* 1. *st.* 1. *c.* 7. § 1. No person shall use or wear in any apparel any printed, painted, stained, or dyed calico, on pain of 5*l.* to the informer, on conviction on the oath of one witness before one justice; who shall on information on oath in six days after the offence summon the party, and upon his appearance or contempt examine the matter, and on proof by confession or oath of one witness determine the same, and on conviction cause the penalty by warrant to be levied by distress and sale, rendering the overplus (charges of distress and sale being first deducted): Provided, that persons aggrieved may appeal to the next quarter-sessions, giving six days' notice, and the sessions shall hear and determine the same, and their judgment be final. 7 G.1. st.1. c.7. Prohibition of calicoes.

§ 2. 4. And if any person shall offer the same to sale, or any household furniture made up of or mixed therewith, unless for exportation, he shall forfeit 20*l.*, half to the informer, and half to the poor of the parish or place where the offence shall be committed, to be recovered in the courts at *Westminster*, with full costs, on prosecution in six months; and if he is a steward or other officer of a corporation, he shall also forfeit his office. Penalty on selling them;

G. 1. st. 1. .7.

§ 3. No person shall use the same in any household furniture, on like pain of 20*l.*

r using them furniture.

§ 11. But this shall not extend to calicoes dyed all blue.

Exceptions.

§ 10. But the same shall extend to stuff made of cotton, or mixed therewith, printed or painted; and to calico chequered or striped; and to calico stitched or flowered in foreign parts with any colour or with coloured flowers made there (muslins, neckcloths, and fustians excepted).

G.2. c.4.

But by stat. 9 *G.* 2. *c.*4. It shall be lawful to use stuff made of linen yarn and cotton wool manufactured and printed or painted in *G. B.*, provided the warp thereof be entirely linen yarn.

4 G.3. c.72. Observations as cottons.

By stat. 14 *G.* 3. *c.* 72. § 1, 2. Whereas doubts have arisen whether stuffs wholly made of cotton spun within this kingdom ought not to be considered as *calicoes*, and as such be liable to the like duties, penalties, and prohibitions; it is enacted, that no greater duty shall be paid for the same than 3*d.* a yard (and by 43 *G.* 3. *c.* 69. *Sch.* (A), than 3½*d.* a yard), and that any person may use the same in apparel or otherwise.

To have three blue stripes in the edge.

§ 3. And in every piece thereof shall be woven in the warp in both selvedges three blue stripes (*a*), each stripe of one thread only; the first of which stripes shall be the first or outermost thread, the second of the said stripes shall be the third thread; and the third of the said stripes shall be the fifth thread, and each piece shall be stamped at each end with a stamp to be provided by the officers of excise; and instead of the word *calico*, which stands for foreign calicoes, each piece shall be marked with the words *British manufactory*.

Exception.

§ 5. Nothing in this act shall extend to cotton velvets, velverets, or other fustians not manufactured in *G. B.*

Counterfeiting stamps.

§ 8. 10. If any person shall counterfeit such stamp, or knowingly sell any such stuffs with a counterfeit stamp, he shall be guilty of felony, without benefit of clergy. (*b*)

Importing calicoes so marked.

§ 9. If any person shall import any calicoes, muslins, or other goods or stuffs made of linen yarn only, or of linen yarn and

stuffs wholly made of cotton were manufactured in *G. B.*, the proof shall lie on the owner and not on the prosecutor. 14 G.3. c.72.

By stat. 51 *G.* 3. *c.* 33. The provisions in stat. 14 *G.* 3. *c.* 72. for weaving the three blue stripes, and the penalties relating to the same; and the provisions of stat. 25 *G.* 3. *c.* 72. relating to the same subject, are respectively repealed. 51 G.3. c.33.

By stats. 10 *Ann. c.* 19. § 71. and 25 *G.* 3. *c.* 72. § 7. Every such printer, painter, stainer, or dyer shall give notice in writing at the next office of his name and place of abode, and where he intends to work; on pain of 50*l.* 10 Ann. c.19. 25 G.3. c.72. Entry of name and house.

And by stat. 1 *G.* 1. *st.* 2. *c.* 36. § 21. Where any person shall take upon him to print, paint, stain, or dye any silks, calicoes, linens, or stuffs at any other place than the place of his usual residence or exercise of his trade, he shall first make entry of such silks, &c. with the officer of the division where he intends so to do, and pay down the duties, on pain of 50*l.* and also of seizure and forfeiture of the said goods. 1 G.1. st.2. c.36.

By stat. 10 *Ann. c.* 19. § 75. Every officer shall at all times by day or night, and if by night in presence of a constable, be permitted on request to enter such person's house, workhouse, drying place, warehouse, field, or other place used by him, and take an account, and shall make thereof a report in writing to the commissioners or to whom they shall appoint, leaving a copy, if demanded, under his hand; and if he shall make default in leaving such copy (after demand in writing, 12 *G.* 1. *c.* 28. § 30.) he shall forfeit 40*s.* 10 Ann. c.19. Officers to enter and take account. 12 G.1. c.28.

And by stat. 10 *Ann. c.* 19. § 78. and 25 *G.* 3. *c.* 72. § 8. None of the said persons shall obstruct the officer in execution of his duty; on pain of 200*l.* Obstructing the officer.

By stat. 10 *Ann. c.* 19. § 72. Every such printer and other person shall once in six weeks make entry in writing at the next office, on oath before the collector or supervisor, of all such goods by them made, containing the kinds and quantity, and the names and places of abode of the owners (if they are not their own); on pain of 50*l.* 10 Ann. c.19. Entry of goods made.

§ 73. But no person shall be obliged to go to make entry further than the next market-town.

§ 77. If the officer shall miss any quantity of the said goods, whereof he had taken an account in his last survey, and shall not on reasonable demand receive satisfaction what is become of the same, the officer may charge such person with the duties of the goods so missing, as if they were printed, painted, stained, or dyed. Officer may charge for goods missing.

And by stat. 25 *G.* 3. *c.* 72. § 9. No printer shall begin to print, stain, paint, or dye any of the goods aforesaid before they shall have been measured and marked at both ends by the officer with a frame-mark, denoting the measure; on pain of forfeiting the same, and also 20*l.* for every piece by him in whose possession they shall be found. 25 G.3. c.72. Pieces to be marked before printing, &c.

§ 11. If any printer, &c. shall wilfully cut out or deface such frame-mark, he shall forfeit 50*l.* Defacing frame-marks.

By stats. 10 *Ann. c.* 19. § 82. and 25 *G.* 3. *c.* 72. § 13. If he shall conceal any of the said goods, before printed, &c. to avoid duty, he shall forfeit 50*l.* And all the silks, calicoes, linens, and stuffs 10 Ann. c.19. 25 G.3. c.72. Goods concealed.

found in any private workhouse, or other place whereof no
hath been given, or the value thereof, shall be forfeited.

25 G.3. c.72. Keeping goods in un-entered places.

By stat. 25 *G.* 3. *c.* 72. § 14. No printer, &c. shall keep an
goods, marked or unmarked, in any room or place where
notice shall have been given as aforesaid; on pain of forf
50*l.* and also such goods, which may be seized by any office

10 Ann. c.19. Payment of the duties.

By stat. 10 *Ann. c.* 19. § 74. He shall within six weeks
entry clear off the duties, on pain of forfeiting double:
they shall deliver out any such goods, after default in paym
the duties, before the same shall be cleared off, they shall
double the value of the goods.

59 G.3. c.90. Persons printing, &c. silks, &c. shall clear the duties every six weeks.

By stat. 59 *G.* 3. *c.* 90. § 11. Every person who shall print,
stain, or dye any silks, muslin, calicoes, linen, or stuffs, in
shall by or at the end of every six weeks clear off and pay
duties which shall, during such six weeks, have been charged
such person or persons respectively, or shall then remain u
for all such silks, muslin, calicoes, linens, and stuffs respe
as shall have been printed, painted, stained, or dyed by hi
or them respectively, upon pain of forfeiting, for every
therein, double the sum of the said duties whereof the pa
shall be so neglected; and no such person, after making def
such payment, shall deliver or carry out, or cause to be del
or carried out, any such printed, painted, stained, or dyed
until he has paid and cleared off the whole of such duties
pain of forfeiting double the value of the goods so delive
carried out.

Penalty.

Delivering without clearing duties.

10 Ann. c.19. 25 G.3. c.72. Removing before stamped.

By stats. 10 *Ann. c.* 19. § 79. and 25 *G.* 3. *c.* 72. § 10. No
who shall print, &c. shall remove any the said goods until the
hath taken an account thereof, and until each piece be stam
marked at both ends thereof; on pain of 50*l.* And the s
carried away without being marked, and *found* in the pos
of any draper or other person for his use fors ale, may be
or the value thereof recovered.

The Attorney General v. Delaune, H. 59 G. 3. 6 Price 288

By stats. 10 *Ann. c.* 19. § 81. and 25 *G.* 3. *c.* 72. § 12—24. Every printer, painter, stainer, or dyer, shall keep the silks, calicoes, linens, and stuffs, which have not been taken account of by the officer, separate from those which have; on pain to forfeit for each offence, by the former act, 5*l.*, by the latter, 50*l.* 10 Ann. c. 19. Goods not surveyed to be kept separate.

And by stats. 10 *Ann. c.* 19. § 98. and 25 *G.* 3. *c.* 72. § 18. On oath by any credible person that he hath reason to suspect that any of the said goods are in the possession of any draper or other person dealing therein, or of any other to his use, for sale unstamped; the commissioners within the bills, or any two justices elsewhere, may issue their warrants, requiring some officer of the said duties (with a constable) in the day-time to search for the same, and to open doors, chests, trunks, and packages, and to seize such goods, and bring them to the next office, and such commodities so found shall be forfeited. Search for goods unstamped.

By stat. 5 *G.* 1. *c.* 11. § 15. and 27 *G.* 3. *c.* 31. § 16. If any of the said goods shall be found in any place on land or water (except on ship-board for exportation) without being marked with a stamp or seal, denoting that the duties have been paid or charged, the same shall be forfeited, and may be seized by any officer of the customs or excise, and the person in whose custody they are found shall forfeit 100*l.* 5 G. 1. c. 11. 27 G. 3. c. 31. Goods found unstamped may be seized.

By stat. 25 *G.* 3. *c.* 72. § 20. The owner or printer of any piece or remnant of *eossae* or foreign *muslins* and *calicoes* shall, before they are presented to the officer, mark the same at both ends with a frame-mark, containing in words at length his name and place of abode, and also the name such goods are commonly known by (except those dyed throughout of one colour), on pain of forfeiting the said goods, and 10*l.* for every piece or remnant. 25 G. 3. c. 72. Foreign muslins and calicoes to be marked before printing with a frame-mark.

§ 21. The owner or printer of any piece or remnant of linens or stuffs made of cotton mixed, or wholly made of cotton wool wove in *G. B.*, called *British manufactory* or *muslins*, plain, chequered, striped, figured, or ornamented (except fustians, velvets, velverets, dimities, and other figured stuffs), shall mark the same at both ends with a frame-mark, containing in words at length his name and place of abode, and the name and quality of such goods, with the ready-money price thereof, before the same is presented to the officer in order to be printed, stained, painted, or dyed: And if the owner is not the printer, &c., then he shall deliver a note with such goods, expressing the number of pieces, &c. their quality and value, and the time when delivered to the printer, &c.; which note shall be delivered by him to the officer before the same are printed, &c. (except those dyed of one colour as aforesaid), on pain that every such piece, &c. not so marked shall be forfeited, and may be seized by any officer; and the owner, or person putting out the same, shall forfeit 20*l.* And if such person shall mark any such piece at a less price than the real value as aforesaid, he shall forfeit the same which may be seized as aforesaid, and also 20*l.* Name of the owner or printer and value of the goods to be marked.

§ 22. If the frame-mark shall be obliterated or defaced, the printer shall give notice thereof to the officer, who shall renew the same. Frame-marks being defaced.

By § 23. and stat. 27 *G.* 3. *c.* 31. § 22. If any person shall counterfeit or forge any frame-mark, to denote the measure, he shall forfeit 100*l.* Counterfeiting the frame-mark.

25 G.3. c.72. 27 G.3. c.31.

§ 17. If any person shall counterfeit the stamp, he shall be guilty of felony without benefit of clergy.

Counterfeiting the stamps.

By stats. 10 *Ann. c.* 19. § 97. 13 *G.* 3. *c.* 56. and 25 *G.* 3. *c.* 72. § 17. If any person shall knowingly sell any of the said goods with a counterfeit stamp, he shall forfeit 100*l.*, and be set in the pillory (*a*) in some public place two hours.

27 G.3. c.31.

Moreover, by stat. 27 *G.* 3. *c.* 31. § 14. If any person shall knowingly sell any of the said goods with such counterfeit stamp, with intent to defraud his majesty, he shall be guilty of felony without benefit of clergy.

25 G.3. c.72. c.74. Exportation.

By stats. 25 *G.* 3. *c.* 72. § 27, 28, 29, 30. and 25 *G.* 3. *c.* 74. § 17 19, 20, 21. Every person who hath paid the duties, or bought such goods of any person who hath paid the duties, may export the same, and shall be allowed all the duties in drawback, as set forth in 43 *G.* 3. *c.* 69. *sched.* (C) on conforming to the following conditions; (*viz.*) The person intending to export such goods shall give 12 hours' notice in writing, if within the limits of the chief office (elsewhere 24 hours), of his intention to pack up the same and of the time and place, to the officer appointed for that purpose who shall measure the said goods, and see that the stamps and frame-marks be taken off; and every piece shall be packed up in the presence of such officer, and shall be sealed and marked as the commissioners shall direct; and if any person shall open such package, or deface such seal or mark (except the officer at the port of exportation), he shall forfeit 20*l.* And the officer who saw the same packed up shall take an account of the kinds and qualities thereof, and make a return to the officer who shall be appointed to receive the said goods at the port of exportation. And such person shall also give six hours' notice in writing to such officer of the time and place of shipping the same; and shall give bond that such goods shall not be unshipped or re-landed, or put into any other vessel (unavoidable accident excepted). And if any person shall unship or re-land, or put into any other ship (except



turer, taking the same out of the loom without having given such notice, and having the same sealed as aforesaid, shall forfeit 5*l.*; and every such piece shall be forfeited, and may be seized by any officer of the customs or excise. 4 G.3. c.37.

§ 20. And the officer with convenient speed, after notice, shall mark and also number each piece, before it is taken out of the loom; and make entry in writing in books to be provided at the expenese of the manufacturer, of the number set to each piece, the length thereof, and the number of threads in the warp; on pain of 10*l.*

§ 21. If the officer shall mark any not made in *England* or *Wales*, or after the same has been taken out of the looms, he shall forfeit 50*l.* for each piece to him who shall sue, and lose his office, and be incapacitated to hold any other office of trust under the crown.

§ 22. If any person shall offer to the officer any bribe to fix the mark to any pieces not so made, he shall forfeit 50*l.*; and if he shall by bribery or otherwise prevail upon the officer to commit such offence, he shall forfeit 100*l.* and stand in the pillory (*a*) two hours.

§ 23. And the officer shall yearly, in the month of *June*, transmit to the commissioners an account of all goods he shall have stamped, and a copy of the entries made, on pain of dismission; and he, or his executors, shall deliver up the seals on demand from the commissioners, on pain of 200*l.*

§ 24. Cambricks and lawns made in *England*, found unstamped, shall be forfeited, and may be seized by any officer of the customs or excise; and after condemnation shall be sold. And every person who shall sell or expose to sale, or have in his custody for that purpose, any cambricks or lawns made in *England* unmarked, shall forfeit 200*l.*

§ 25. But the said goods so seized, condemned, and sold, shall not be worn in this kingdom, but exported, and not be sold but upon condition of exportation; and shall not be delivered out of the warehouse until bond be given, to the satisfaction of the collector, in double penalty of the goods, that the same shall be exported, and not re-landed.

§ 26. To counterfeit the seal appointed by this act; or import any foreign cambricks or lawns having such counterfeit mark thereon; or expose the same to sale knowing the stamp thereon to be counterfeited, is felony without benefit of clergy.

§ 28. All goods condemned in pursuance of this act, and all pecuniary forfeitures (not herein otherwise directed), shall be sued for and recovered in any of his majesty's courts of record at *Westminster*, in the name of the attorney-general, or of such officer as aforesaid; and be applied (after all charges deducted) half to the use of the king, and half to the officer or other person who, pursuant to the directions of this act, shall seize, inform, or sue.

§ 31. And if any question shall arise, where the goods were manufactured, the proof shall lie on the owner or claimer, and not on the officer.

By stats. 10 *Ann. c.* 19. § 92. 24 *G.* 2. *c.* 40. § 29. and 25 *G.* 3. *c.* 72. § 33, 34., the penalties (except as is above mentioned in relation to calicoes) may be sued for, levied, and mitigated, as by the laws of Power of the justices.

(*a*) *Abolished by* 56 *G.* 3. *c.* 138. *See title* Pillory, Vol. III.

excise (*a*), or in the courts of *Westminster*; and shall be employed half to the king, and half to him that shall discover, inform, or sue.

Utensils liable. And by stats. 10 *Ann. c.* 19. § 83. 25 *G.* 3. *c.* 72. § 15. and 28 *G.* 3 *c.* 37. § 21. all the utensils and instruments for printing, painting staining, or dyeing such goods, in custody of any the said persons or any other to his use, shall be liable to all arrears of the duty and to all penalties concerning the same, in like manner as if such person were the lawful owner.

§ III. (11.) Malt.

[12 Ann. st. 1. c. 2. — 6 G. 1. c. 21. — 12 G. 1. c. 4. — 3 G. 2. c. 7 — 33 G. 2. c. 7. — 1 G. 3. c. 3. — 48 G. 3. c. 74. — 59 G. 3. c. 8 — 3 G. 4. c. 18. — 6 G. 4. c. 58. — c. 81. — 7 & 8 G. 4. c. 52. — c. 53.]

No malt to be imported. By stat. 12 *Ann. st.* 1. *c.* 2. § 26. No malt shall be imported, on pain of forfeiting the same, and the value thereof.

Duties. Excise. By stat. 6 *G.* 4. *c.* 58. § 1. The former duties, allowances, and drawbacks of excise upon malt are repealed.

New duties. § 2. New duties, allowances, and drawbacks, are imposed.

Note. — Which new duties, &c. are now recoverable, and to be collected according to the general regulations of the new excise law, 7 & 8 *G.* 4. *c.* 53. (*vide ante*, p. 60. *et seq.*) and the new malt act, 7 & 8 *G.* 4. *c.* 52. (*post*).

Licences. By stat. 6 *G.* 4. *c.* 81. § 1. The former duties on excise-licences are repealed; and by § 2. new duties are enacted; *viz.* (*int. al.*)

For every excise-licence to be taken out by every maltster or maker of malt for sale, if the quantity of malt made by such maltster or maker of malt, within the year ending the 5th of *July* in each year, shall not exceed 50 quarters, the annual excise duty of 7*s.* 6*d.*

[redacted]

licences, penalties, &c. inserted at length, *ante*, tit. Ale and Beer, p. 120. *et seq.*

By stat. 7 & 8 *G.* 4. *c.* 52. intituled *An act to consolidate and amend certain laws relating to the revenue of excise on malt, made in the U. K.; and for amending the laws relating to brewers in* Ireland, *and to the allowance in respect of the malt-duty on spirits made in* Scotland *and* Ireland, *from malt only*, the several regulations contained in various former acts, relating to the malt-trade, have been embodied, and additional provisions enacted, the same having come into effect from the 10th *October*, 1827. 7 & 8 G. 4. c. 52. New malt-act.

As the provisions of this act are now under the consideration of H. M.'s government, with a view to their repeal; and it is understood that new regulations for the malt-trade will be substituted for those now subsisting, it is deemed more expedient, in this place, to refer to the statute itself, than to transcribe it. Suffice it, therefore, to add, that

The general regulations affecting the business of maltsters, and of factors or dealers in malt, in the U. K., are contained in the following sections of the act; *viz.* from § 1. to 53. inclusive.

Those relating to *brewers in Ireland*, in sections 54. to 65. inclusive.

To *distillers from malt* in *Scotland and Ireland*, in sections 66. to 75. inclusive.

To allowances in respect of malt destroyed by fire, or accident, in sections 76. to 78. inclusive.

By § 79. All malt, corn, or grain, and all vessels and utensils used for making or keeping malt, &c., are made subject to arrears of duty, penalties, and forfeitures.

By § 80. All former laws, &c. relating to the revenue of excise on malt made in the U. K., or to permits for the removal of malt, or to any thing expressly provided for by this act, and which are inconsistent with this act, are repealed.

By § 81. All fines, penalties, and forfeitures are to be recovered or mitigated, and distributed by such means, in *G. B.* and *Ireland* respectively, as any fine, penalty, or forfeiture, imposed by any act or acts relating to the revenue of excise in *G. B.* and *Ireland* respectively, may be recovered, &c. Recovery of penalties, &c.

By § 82. This act shall extend to the whole of the U. K. except as to the several provisions specially provided for by this act, in respect of brewers of beer for sale in *Ireland*, and the conditions on which allowances upon spirits distilled from malt only in *Scotland* and *Ireland*, are henceforth to be granted. Act to extend to the U. K. except, &c.

By stats. 12 *G.* 1. *c.* 4. § 48. and 33 *G.* 2. *c.* 7. § 14. No malt entered and made for exportation only shall be liable to the duties; and no drawbacks shall be allowed for any malt exported. Making malt for exportation.

By stats. 1 *G.* 3. *c.* 3. § 9. and 59 *G.* 3. *c.* 3. § 8. Where any bounty is allowed on the exportation of malt, there shall be allowed for every 20 quarters of grain, 30 quarters when dried and made into malt, and no more; though by the steeping or watering thereof, it may be run out into a greater quantity. Allowance to maltsters for grain made into malt.

By stat. 12 *G.* 1. *c.* 4. § 49. 58. Every maker, before he shall begin to wet any grain to be made into malt for exportation, shall leave notice in writing with the officer of the quantity of grain intended to be contained in each steeping, on pain of 50*l.*; and 12 G. I. c. 4.

2 G.1. c.4. the same shall be kept separate from all other corn to be made into malt for home consumption, on pain of 5s. a bushel.

§ 50. No maker of malt shall begin to wet or steep any corn to make into malt for exportation above six days before all the corn he may have working on his floors for home consumption shall be dried off; nor shall he begin to wet corn for home consumption above six days before all the corn on his floors for exportation be dried and locked up, on pain of 5s. for every bushel.

3 G.4. c.18. Grain making into malt for exportation to be kept separate until measured. By stat. 3 G. 4. c. 18. § 12. Every maker of malt shall keep each steeping of grain making into malt for exportation, when the same shall be on the kiln, or after it shall be taken off, separate from all other steepings, until the same shall be measured, on pain of forfeiting 50l.

3 G.2. c.7. By stat. 3 G. 2. c. 7. § 16. The maker shall keep the whole quantity of his corn making into malt for exportation of one steeping or wetting, when the same shall be on the kiln, or after it shall be taken off the kiln, separate from any former steeping or wetting, until it hath been measured in presence of the officer, on pain of 50l.

12 G.1. c.4. By stat. 12 G. 1. c. 4. § 52. The officers during the steeping of the corn so intended for exportation, and till it be dried and locked up, may gauge and take an account thereof in all its operations, as in case the duties were to be charged thereon.

§ 58. And persons opposing the officers in the execution of this act, shall forfeit 50l.

12 G.1. c.4. 3 G.2. c.7. Notice of taking malt off the kilns. Such malt to be exported or stored. By stats. 12 G. 1. c. 4. § 51. 58. and 3 G. 2. c. 7. § 17. The maker shall give notice in writing to the officer, or leave notice at the next excise-office, of the hour when he intends to take any malt off the kiln, that the officer may attend the measuring; and after it has been measured, it shall (on pain of 50l.) be immediately carried on shipboard, or else into storehouses, to be provided by such maker, to be there kept apart from all other malt under two locks, one to be provided by the proprietor, and the other by the officer at the expense of the proprietor, whereof one key to be kept by



or other place, in manner as aforesaid, shall open any of the locks or doors, or shall make any way or kind of entrance into such storehouse or other place, or shall remove any part whatsoever of the partition between any such storehouse or place, and any other place whatsoever next thereunto adjoining, or shall remove out of the said storehouse or other place any quantity whatsoever of the malt that has been so locked up and secured, without the knowledge and consent of, or without first having given notice to, some officer for the said duties, he, she, or they shall respectively forfeit the sum of 100*l.* 3 G.4. c.18. to be opened, or entrance made, without giving notice to the officer, on penalty of 100*l.*

By stat. 12 *G.* 1. *c.*4. § 53. When any maker or proprietor shall be desirous to take away any of the malt for exportation, and shall thereof give notice in writing to the officer forty hours before the time he shall desire to take out the same, expressing in such notice the quantity of the malt, and the port to which it is to be removed, the officer shall attend at the place where the malt is locked up, and see it measured and delivered out. 12 G.1. c.4.

§ 54. The officer shall keep an account of the malt so delivered out, and of the person to whom it belongs, and shall give such person a certificate to the officer of the division to which it is intended to be removed, expressing the quantity, the name of the maker or proprietor, and the place whence delivered, who shall file the same, and make an entry thereof; and if the maker or proprietor shall neglect to deliver such certificate, he shall forfeit 50*l.*

§ 57. Persons intending to ship malt for exportation shall give at least forty-eight hours' notice before they begin to put it on board to the officer of the port, in writing, of the hour when such shipping is intended to be begun, and the name of the ship; on pain of 5*s.* a bushel.

§ 57. If the malt so entered and made for exportation shall not, within nine months next after the making and drying, and carrying into such room, and there locked up as aforesaid, be exported, the proprietor shall for every bushel forfeit 5*s.*

§ 56. During the shipping, at all such times as the proprietor shall not be actually shipping merchandises, the hatches of the ship shall be kept locked with two locks at each hatch, one to be provided and the key kept by the proprietor, and the other by the officer; and the hatches shall be so kept locked from the time the ship shall be fully loaded till it be ready to sail.

§ 58. And persons breaking open the hatches of any ship so locked down shall forfeit 50*l.*

§ 55. The officer may not only attend the measuring of such malt, but continue on board the ship till it be cleared of the port.

By stat. 3 *G.*4. *c.*18. § 15. And the better to enable the officers for the duties upon malt to discover whether all such malt made for exportation, and that has been locked up and secured in any storehouse or other place or places to be exported, has been really exported; it is enacted, that every such maltster or maker of malt, who shall at any time have any quantity of malt locked up and secured in any storehouse or any other place, as is before directed, to be exported, shall, within fifteen months next after the 5th day of *July* preceding, remove and clear out of his storehouse, or other place, all and every part and parcel thereof, that at any time after the said 5th day of *July* shall be locked up, and secured in such *storehouse or other place, in* order to be exported, and 3 G.4. c.18. Storehouses used for securing malt for exportation to be cleared out every 15 months after the 5th of July, on penalty of 50*l.*

3 G. 4. c. 18.

shall always from time to time, in every fifteen months after the 5th day of *July*, remove and clear out of such storehouse or other place, in order to be exported, all and every part or parcel of malt that at any time within the fifteen months next after the 5th day of *July* preceding shall be locked up and secured in any storehouse, or in any other place that shall be made use of by him for the keeping of malt for exportation, on pain of forfeiting the sum of 50*l*.

Malt re-landed after being shipped shall be forfeited, and treble its value.

§ 16. If after the shipping of any malt made to be exported, the malt so shipped to be exported, or any part thereof, shall be re-landed in any part of *G. B.*, then, and in every such case, all the malt which shall be re-landed, and treble the value thereof shall be forfeited; (that is to say,) one moiety thereof to the king, and the other moiety thereof to the person or persons who shall seize, inform, or sue for the same; and such malt so re-landed shall and may be seized by any officer or officers of customs or excise.

Recovery and application of penalties.

§ 18. All fines, penalties, and forfeitures imposed or created by this act, shall be sued for, recovered, levied, or mitigated by any law of excise, or by action or information in any of H. M.'s courts of record at *Westminster* or in the court of exchequer in *Scotland*; and one moiety shall be to H. M., and the other moiety to him who shall inform, discover, or sue for the same.

§ 19. All powers in and by stat. 12 *C.* 2. *c.* 24. or any other law relating to excise, shall be put in execution for the purpose of this act, &c.

1 G. 3. c. 3.
59 G. 3. c. 3.

By stat. 1 *G.* 3. *c.* 3. § 15, 16. and by 59 *G.* 3. *c.* 3. § 13. Every maker of malt having stock in any storehouse on the 24th *June* 1819, or who shall use any such storehouse for keeping of malt for exportation, shall every fifteen months after the last clearing clear out the same on pain of 50*l*.

6 G. 1. c. 21.

By stat. 6 *G.* 1. *c.* 21. § 4. If any unmalted oats or barley be found mixed among malt shipped for exportation, the person shipping the same shall forfeit 5*s.* for every bushel

[redacted]

duties on malt, or any penalty or forfeiture relating to the same, from any judgment, order, or determination, or any conviction of justices, to the justices assembled at the quarter-sessions of the peace: for obviating such doubts, it is enacted, that it shall be lawful for any person who shall find himself aggrieved by any judgment, order, determination, or conviction of any justice of the peace, in any case concerning the making of malt, or any of the duties on malt, or any penalty or forfeiture relating to the same, to appeal from such judgment, &c. to the justices assembled at the next general quarter-sessions of the peace to be holden for the county, riding, shire, stewartry, city, or place in which such judgment shall have been given, or order, &c. made; which said justices, or the major part of them so assembled, are thereby empowered to hear and finally determine concerning the truth of the facts and merits of the case in question between the parties to such judgment, &c. respectively; and if at such quarter-sessions any defects of form shall be found in such proceedings before the justice who gave such original judgment, &c. such defects shall or may be rectified and amended by the order or orders of such justices, or the major part of them so assembled; and no writ of *certiorari* shall be allowed to set aside any determination or order of the said justices, or the major part of them so assembled: Provided, that upon every such appeal the justices so assembled at such quarter-sessions shall and do proceed to re-hear, re-examine, and re-consider the truth of the facts and the merits of the case in question between the parties to such original judgment, &c., and to re-examine thereto upon oath the same witnesses, or any of them, and no other, who shall have been before examined before the justice or justices of the peace at the original hearing. 48 G. 3. c. 74. relating to the making of malt, may appeal to the quarter-sessions.

By § 22. Every conviction by or before any justices of the peace for any fine, penalty, or forfeiture, fines, penalties, or forfeitures by this or any other act of parliament relating to the duties of excise on malt imposed, may be made in the form following; to wit, Form of conviction.

BE it remembered, that on the ——— day of ———, in the year of our Lord ———, A. B. *was, on the complaint of* C. D., *he the said* C. D. *then and there being an officer of excise, convicted before us, two of the justices of the peace for the county of* ——— [or, *for the riding or division of the county of* ———, or, *for the city, liberty, district, or town of* ———, as the case shall happen to be,] *in the penalty of* ———, *in pursuance of an act made in the* ——— *year of the reign of King* George *the third, for* ——— [as the case may be]. *Given under our hands and seals the day and year first above written.*

By § 25. All fines, &c. by this act imposed shall be sued for, &c. as any fine, &c. may be by any law of excise, or by action, &c.; one moiety to his majesty, the other to him who shall inform, discover, or sue for the same. Recovery of fines and penalties.

By stat. 12 *Ann. st.* 1. *c.* 2. § 38. The justices at their quarter-sessions may award costs to either party, as they shall think fit, to be levied by warrant of the justices, or two of them, on the goods of the party. 12 Ann. c. 2. Costs.

§ 37. No *certiorari* shall be allowed to set aside any order of the justices.

Mum. *See* **Excise,** (*Ale and Beer,*) (*Cider, Perry,*) *&c.*

§ III. (12.) Paper.

[10 Ann. c. 19. — 1 G. 1. st. 2. c. 36. — 11 G. 1. c. 7. — 24 G. 3. sess. 2. c. 41. — 26 G. 3. c. 78. — 28 G. 3. c. 37. — 32 G. 3. c. 54. — 34 G. 3. c. 20. — 41 G. 3. (U. K.) c. 8. — 42 G. 3. c. 94. — 43 G. 3. c. 69. — 47 G. 3. c. 30. — 52 G. 3. c. 143. — 56 G. 3. c. 103. — 1 G. 4. c. 58. — 6 G. 4. c. 81. — c. 111.]

c. 69.

By stat. 43 *G.* 3. *c.* 69. *Sched.* (A.) (B.) certain excise-duties were imposed upon papers of different kinds, not being sheathing paper, or button-papers or button-board; but by stat. 47 *G.* 3. *sess.* 2. *c.* 30. this exception is repealed, and they are made subject to the same duties as millboard, and subject to the same regulations, &c. as other exciseable commodities.

sess. 2.

c. 58.
board.

By stat. 1 *G.* 4. *c.* 58. § 21. Scaleboard is to be charged as millboard, and scaleboard-makers are liable to the laws and regulations imposed on paper-makers. These several duties upon paper are to be under the management of the commissioners of excise.

.4. c. 111.
stoms.

By stat. 6 *G.* 4. *c.* 111. Certain duties of customs are also payable upon papers and books imported.

G. 1. c. 7.

By stat. 11 *G.* 1. *c.* 7. § 16. Old rags, old ropes, or junks, or old fishing-nets, may be imported duty free.

2 G. 3. c. 54.
Importing printed, painted, or stained paper.

By stat. 32 *G.* 3. *c.* 54. § 1. The officers of the customs, where any printed, painted, or stained paper shall be imported, shall cause the same to be marked, and the commissioners shall provide for them proper frames and stamps, and such numbers or marks as they shall think fit; which officers are required to measure every such piece of paper, and to mark the same with such frame- stamp as follows: — every piece of less than half a yard and stamped at one end only; and every ords to be marked and stamped be from time

shall be in the custody of any printer, painter, or stainer of paper, or person dealing therein, or other person for his use, without having such stamps or seals as aforesaid, they may authorise any officer of the customs or excise, with the assistance of a constable, in the day-time, to search for the same, and to open doors, chests, trunks, and packages, and the paper so found unstamped shall be forfeited, and may be seized by any officer of the customs or excise: Provided always, that no remnant or piece of such paper, being of less length than shall be expressed by such frame-mark so found, having such stamp or seal as aforesaid at one end thereof, shall be forfeited, by reason of not having such stamp or seal at both ends thereof; and if any person shall obstruct any of the said officers in the execution of their duty herein, he shall forfeit *50l.* 52 G.3. c.54.

§ 5. To prevent frauds in adding to any piece or remnant of such paper, after the same hath been stamped or sealed, and also to prevent the importation of any such paper without being stamped or sealed as aforesaid, if any piece or remnant of such foreign imported paper, not having such frame-mark and stamp thereon as aforesaid, (or having the same at one end or both ends thereof, and being of a greater length by half a yard or more than by such mark is expressed,) shall be found in the possession of any printer, painter, or stainer of paper, or dealer therein, the same shall be forfeited, and may be seized in manner aforesaid, and the person in whose possession the same shall be found shall also forfeit *50l.*

§ 6. All penalties and forfeitures by this act imposed may be sued for, recovered, levied, or mitigated, as by the laws of excise, or in the courts at *Westminster*, half to the king, and half to him who shall sue.

By stat. 6 *G.* 4. *c.*81. § 2. A licence is required to be taken out annually by all makers of paper, pasteboard, or scaleboard; and by all printers, painters, or stainers of paper. And an annual excise duty is payable thereon; *viz.*— 6 G.4. c.81. Licences.

	£	s.	d.
By every maker of paper, pasteboard, or scaleboard -	0	7	6
By every printer, painter, or stainer of paper - -	4	0	0

And *note.*—The several provisions of this act respecting licences, penalties, &c. inserted at length, *ante*, tit. **Ale and Beer**, p. 120., *et seq.*

By stat. 42 *G.*3. *c.*94. § 10. All brown paper made of old ropes or cordage only, without separating or extracting the pitch or tar therefrom, and without any mixture of other materials therewith, shall be deemed and taken to be paper of the second class or denomination, and shall be charged with the duty accordingly; and all other paper whatever (glazed paper for clothiers and hotpressers excepted) shall be deemed and taken to be of the first class or denomination, and chargeable accordingly. 42 G.3. c.94. Two classes of paper.

By stat. 1 *G.*4. *c.*58. § 20. If any maker of paper shall couch or press together, without the use of paste, any paper of the first class, or the materials thereof, without any sheet of paper of the same or any other class or materials, all such paper so couched or pressed together shall be liable to the duties upon paper of the first class. 1 G.4. c.58. Paper of the first class pressed together without paste liable to the duties imposed on that class.

1 G.4. c.58.

Paper distinguished by first and second class: millboard, button-board, &c. to bear their different denominations.

§ 15. Whenever paper, &c. are required to be distinguish the classes and kinds, the same shall not be required to be wise distinguished than into paper of the first and second and millboard, button-board, button-paper, glazed paper, shea paper, pasteboard, and scaleboard, into their several denomina And no penalty shall be incurred by not distinguishing or ating the same into their several sorts.

Scaleboard-makers liable to the laws and regulations imposed on paper-makers.

§ 21. After reciting that whereas scaleboard is an article from the shaving or cutting of wood, and is used in the mar ture of various articles as a substitute for millboard and pastet and has been included in the laws of excise, and doubts arisen whether the makers are subject to the regulatior makers of paper; enacts, that every maker of scaleboard sh subject to the regulations, penalties, and forfeitures in force spect to makers of paper, and shall take out a licence as a r of paper, and all scaleboard shall be tied up, labelled, charged duty, and removed as millboard.

41 G.3. c.8. No paper to be painted for hangings, but of the first class.

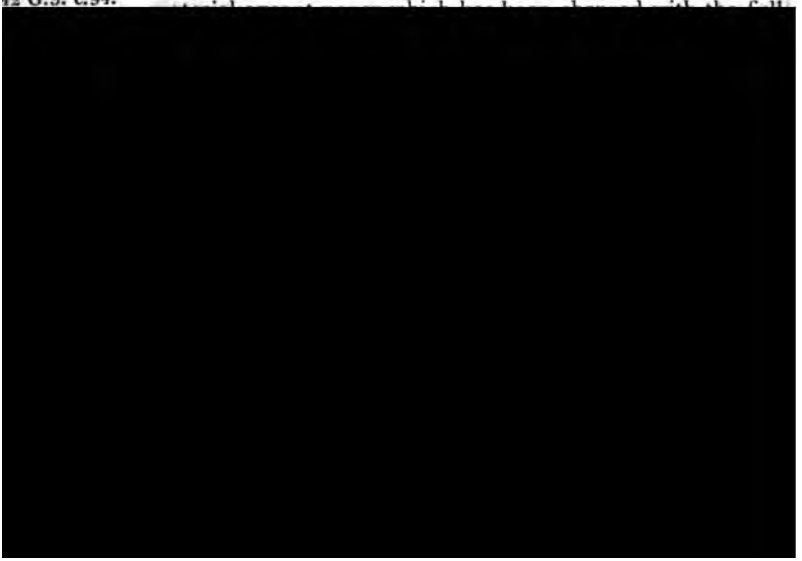
By stat. 41 G.3. (U.K.) c.8. § 6. No person shall print, pai stain any paper to serve for hangings or other uses, except in respect whereof the duty chargeable on paper of the first hath been charged, nor unless such paper have been previ produced to the officer, inclosed in the original wrapper in it was charged, and with the impression of the stamp den such charge, and the name of the officer and date of the ch and the class of such paper marked and remaining visibly the and such printer, painter, or stainer shall open every rean bundle of such paper, in the presence of such officer, who thereupon take an account of the quantities and dimer thereof, and stamp the same according to law.

Maker not to diminish paper before it be charged.

§ 7. If any maker shall cut or diminish any paper befor same shall be taken account of, weighed, and charged, he forfeit 50*l.* and also such paper; which shall also be seized.

42 G.3. c.94.

By stat. 42 G.3. c.94. § 11. No pasteboard shall be made o



on the business of making pasteboard within one quarter of a mile of any mill or manufactory for the making of paper, on pain of 100*l*. 42 G.3. c.94. be a paper-maker, nor make within ¼ of a mile, on pain of 100*l*.

By stat. 56 *G.* 3. *c.* 103. § 13. The provisions of 42 *G.* 3. *c.* 94. § 11, 12. respecting the materials from which pasteboard is to be made, shall apply only to such makers of pasteboard as are not makers or concerned in the trade of a maker of paper, millboard, button-board, button-paper, glazed paper, or sheathing paper; and it shall be lawful for every maker of paper, millboard, button-board, button-paper, glazed paper, or sheathing paper, to make, at his entered paper-mill, any pasteboard, subject to the duties herein mentioned, according to the quality thereof, from paper, millboard, button-board, button-paper, glazed paper, or sheathing paper made by him at such mill, before the same shall have been charged with the duty. What pasteboard-makers are within 42 G.3. c.94.

§ 15. There shall be allowed to every maker of pasteboard, not being a maker or concerned in the trade of a maker of paper, millboard, button-board, button-paper, glazed paper, or sheathing paper, who shall make pasteboard, and be charged with the duties thereon, from paper, millboard, button-board, button-paper, glazed paper, or sheathing paper, for which the duties shall have been paid, and which shall have been taken account of by the officer before the making thereof into pasteboard, so much of the duties paid for such paper, &c. as shall be equal to the duty paid by the maker of such pasteboard, upon oath being made by such maker, or his principal workman, to be administered by the collector or supervisor of excise, that such pasteboard has been wholly made from duty-paid paper, &c. so previously produced and taken account of. Allowance of duty to pasteboard-makers.

And by stat. 34 *G.* 3. *c.* 20. § 5. Every maker of paper, pasteboard, millboard, scaleboard, or glazed paper, before he shall begin, shall make entry in writing at the next excise-office of every mill, workhouse, and other place by him intended to be used for making, drying, or keeping paper, &c. or materials proper to be made into paper, &c.; and of all vats, presses, utensils, and vessels intended to be used in making the same, on pain of forfeiture thereof, and also 50*l*. 34 G.3. c.20. Places of making or keeping to be entered.

By stat. 1 *G.* 4. *c.* 58. § 17. No person shall carry on or be concerned in the trade of a retail stationer or dealer in paper, millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard or scaleboard, at any paper or pasteboard mill, nor shall any maker of paper carry on or be concerned in the business of a retail stationer or dealer in paper in any premises within the distance of one mile of any mill for the making of paper, millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard, wherein he is concerned, on pain of forfeiting 200*l*. 1 G.4. c.58. Stationer not to carry on business at a mill or in any premises within one mile of any mill on penalty of 200*l*.

By stat. 42 *G.* 3. *c.* 94. § 15. All paper, pasteboard, millboard, scaleboard, and glazed paper, made in *G. B.* or in *Ireland*, and imported from thence, shall be made up by the maker thereof in this manner; (that is to say,) all such paper, as soon as made, shall be made up into quires, each quire to consist of 24 sheets, and such quires shall be forthwith made up into reams of 20 quires each; and all such pasteboard, millboard, scaleboard, and glazed paper, *respectively shall, when made,* be forthwith made up in 42 G.3. c.94. Paper, pasteboard, &c. to be made up as herein directed.

? G.3. c.94.

regular parcels, each parcel containing even dozens of sheets of one and the same denomination and of equal dimensions, and not less than 24 nor more than 72 such sheets in each parcel; and every maker shall by himself or servant cause all such paper, pasteboard, &c. to be immediately tied up in wrappers conformably to the directions of 34 *G.* 3. *c.* 20. § 7. &c. [*see post*, p. 257.], and shall without delay mark on each wrapper, in large legible characters and words at length, the class of the paper enclosed, distinguishing in which of the two classes the duty in respect of such paper is chargeable, together with the number of the ream according to the number of such reams of each such class, made by such maker at such mill during the current quarter, to be computed from *January* 5, *April* 5, *July* 5, and *October* 10, as the case may require, in such year, such number to be taken progressively, beginning 1, 2, and so onwards, according to the number of reams of each class made at such mill in each such quarter; and on each such parcel of pasteboard, &c. there shall in like manner, as soon as tied up as before directed, be marked in like manner the true description of such parcel, and whether the same be pasteboard, millboard, scaleboard, or glazed paper, and the number of sheets in each parcel, together with the progressive number of such parcel of pasteboard, &c., made by such maker at his mill or manufacture during the then current quarter, commencing as aforesaid; and if any maker of paper, pasteboard, &c. shall neglect or refuse so to make and tie up, and denominate for 24 hours after such paper, pasteboard, &c. shall be made; or after the same is tied up and marked, and before it is charged, shall untie or take the same out of the wrapper, or otherwise alter any reams or parcels, or the denominations or numbers marked thereon or on the wrappers; or shall conceal or remove any such paper, pasteboard, &c. from the mill-room or other place entered for making, laying, or keeping the same; every such maker shall for each offence forfeit 200*l.*, together with all such paper, pasteboard, &c. which shall be seizable: Provided that every maker

n penalty of
00*l.* and for-
ture of the
per, &c.

gth on the label, the words *cut paper*, and the number of into which each sheet has been divided, and shall keep aper separate from all uncut paper, and from all millboard, -board, button-paper, glazed paper, sheathing paper, and ard; and if any maker shall neglect to distinguish paper ided as aforesaid, or to keep the same separate, he shall 50*l.* 56 G. 3. c. 103. Penalty.

tat. 34 *G.* 3. *c.* 20. § 7. Every maker of paper, pasteboard, ose mill or workhouse is situate in any city or market- who shall have any paper, &c. to be weighed and charged e duty, shall give twenty-four hours' (elsewhere forty-eight previous notice in writing of the time and hour of day to icer of excise, who shall attend; and such maker or his t shall produce to such officer, so soon as he shall attend, ole thereof, tied up in the manner following; (*viz.*) all such shall be enclosed and tied up with strong thread or string in containing one ream or bundle each, and not more or less; such pasteboard, millboard, scaleboard, and glazed paper e tied up with strong thread or string in such parcels as id; and the different parts of such thread or string shall ver and cross each other at the middle of the ream or ; and where the different parts of such string shall cross ther, the same shall be passed from thence over and across ds and sides of such ream or bundle; and if such maker ot at the time and hour mentioned in such notice produce officer all the paper, pasteboard, &c., for which any duty is harged, tied up, and the proper class and other matters before ed (42 *G.* 3. *c.* 94. § 15., p. 255, 256.) marked thereon, such shall be void, and he shall be obliged to give a fresh and tice before any account shall be taken or the duty charged, fore he shall remove the same from the mill where made. 34 G.3. c.20. Notice of weighing. Paper, &c. how to be tied up.

Every maker shall write or print in large and legible ters upon the label hereinafter mentioned, affixed on every f paper, and upon every parcel of millboard, button-board, -paper, glazed paper, sheathing paper, or pasteboard, the ; of such ream or parcel; and if any such maker shall ne- o to do, or if any such ream of paper or parcel shall, on re-weighed by any officer of excise, be found to weigh less e than five *per cent.* under or over the weight so marked, , or printed on such ream or parcel, the same shall be for- and shall be seized by any officer of excise; and the maker orfeit 50*l.* 56 G.3. c.103. Makers to mark the weight on the label affixed to every ream of paper or parcel of pasteboard. Penalty.

tat. 1 *G.* 4. *c.* 58. § 5. Every maker shall, in writing or print- every ream of paper, and parcel of millboard, button-board, -paper, glazed paper, sheathing paper, pasteboard, and scale- as required by stat. 56 *G.* 3. *c.* 103., the weight thereof (*a*), or print the same in words at length, joining thereto *lbs.* or s, and shall write or print the same on the label affixed on rapper of every ream or parcel; and if such maker shall t so to do, as soon as such ream or parcel is tied up in the er, at or before the time when such ream or parcel is pro- to be weighed or charged by the officer with duty; and if am or parcel shall, on being re-weighed by any officer of 1 G.4. c.58. Weight of paper to be put in words, joining to it lbs. or pounds on the label to be affixed on the wrapper of every ream of paper, &c. Penalty on neglect, or if

(*a*) *Sic.*

1 G.4. c.58.

paper, &c. be found to be under the weight marked, forfeiture and 100*l.* for every ream or parcel.

excise, be found to weigh under or over the weight so marked five *per centum*, if the weight of the ream or parcel exceed twenty pounds, or ten *per centum* if twenty pounds or less weight, the same shall be forfeited, and may be seized by any officer of excise, and the maker shall forfeit 100*l.* for every such ream or parcel.

One of such labels shall be pasted on the wrapper, that when the ream is tied up, the label shall be on the top with the end thereof, for receiving the impression of the departure stamp.

§ 6. The maker shall, before he tie up any ream of paper or parcel of millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard, fix with paste and glue, or paste or glue on one of the wrappers, one of the labels herein mentioned, and press the same so that such label be firmly fixed and dried thereon; and shall tie up every ream and parcel in a wrapper or wrappers, on or to one of which such label shall be fixed and dried, and which label when the ream and parcel is so tied up shall be on the top of every ream and parcel, with the end thereof, for receiving the impression of the departure-stamp on the side of such wrapper, or the label shall be affixed on such part of the wrapper as the commissioners of excise in *England* shall order; and the maker shall, after the ream or parcel is so tied up, write or print on such label the class of paper, and the denomination and the number of dozens of sheets of millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard, contained in such wrappers, and the weight of such ream or parcel; and when the officer of excise shall weigh any paper, &c. for stamping and charging the same with duty, the maker shall write on such label the progressive number of each ream and parcel as and when the same is put into or taken out of the scale, and the quarter and year in which the same is weighed; and such officer shall write upon such label the day of the month in which the ream and parcel is weighed, and sign his name, and stamp the same with the stamp denoting the charge of duty, on the top of every ream or parcel, part of the stamp being on the label and part on the wrapper, and shall also stamp every ream

Class and weight to be put on such label by the maker, and when the officer weighs the paper, &c. shall put thereon the progressive number on such ream, &c. and the quarter and year when weighed.

Officer to write on such label the day of the

tied up and labelled; or shall not, on demand of any supervisor, or officer of excise of equal rank, deliver all such labels delivered to such maker as shall be above the number for which such maker has produced to the officer, to be taken account of, reams of paper, or parcels of millboard, &c. such maker shall, for every such label, wrapper, ream, and parcel, forfeit 200*l.* 1 G.4. c.58.

§ 7. Every maker shall, before he send out or remove from his mill any paper, &c. distinctly fix an impression with printers' ink of such departure-stamp on such part of the label of every ream of paper, and of every parcel of millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard, as shall be prepared or directed by the commissioners of excise of *England* for that purpose, and on each side of every wrapper on which the label is fixed, near to and above the duty-stamp, and which impression shall contain the number of the day, month, and year on which the same was fixed; and if any maker, or his servant, shall not before he send out or remove any paper, &c. affix on the label and wrapper thereof such impression of the departure-stamp; or if any ream of paper, or parcel of millboard, &c. having such impression on such label and on the wrappers thereof, shall be found in the possession or entered premises of any such maker (not being paper, &c. received by such maker from some other mill, or returned from his customers, and of which notice shall be given as herein mentioned,) after the expiration of twenty-four hours after the date of such impression, *Sundays* excluded; or if any label or wrapper having thereon such impression of a departure-stamp, and not containing paper, &c. shall be found in the possession or on the entered premises of any such maker; or if any paper, &c. shall be found removing or removed from any such mill, or in the possession of any stationer or dealer in paper (not being broken reams or parcels for immediate sale) without being enclosed in a wrapper so labelled, and with such impressions of a departure-stamp thereon, and on the wrappers thereof, every such label, wrapper, ream, parcel, paper, millboard, &c. shall be forfeited, and may be seized by any officer of excise; and every such maker and person removing, or who has removed or been concerned in the removal or receipt of any such paper, &c.; and every stationer, dealer, or person in whose possession such paper, &c. shall be found, shall forfeit 200*l.* for every such ream and parcel.

Maker shall fix an impression thereof on the label of every ream of paper, &c. before the same is sent out of the mill, and on each side of the wrapper.

Penalty for not giving receipt for the stamps; or for not using it as directed; or for having paper, &c. in possession for 24 hours after being so stamped;

or for removing paper, &c. without such departure-stamp;

forfeiture of paper, &c. and 200*l.* for every ream and parcel.

By stat. 34 *G.* 3. *c.* 20. § 10. As soon as the officer is satisfied that the conditions in this act specified have been complied with, he shall stamp or mark every ream and bundle of paper, and parcel of pasteboard, &c. to denote the duty, or shall affix on every such bundle or parcel a proper label, to denote the duty being so charged, and shall write his name upon each, together with the date, day, and year on which the duty was charged; and if any person shall wilfully deface, obliterate, or alter the same, or any part thereof, or any impression of any such stamp or mark, he shall forfeit 50*l.* for every such offence. 34 G.3. c.20.

Directions for stamping paper.

Defacing marks.

By stat. 56 *G.* 3. *c.* 103. § 6. On the label, when perfectly dry, but not before, shall be impressed by the officer after he has weighed such paper, &c. part of the stamp to denote the charge of duty, the other part being impressed upon the wrapper of the ream of paper, *or upon the larger piece* of paper to which the 56 G.3. c.103.

56 G.3. c.108. label is affixed upon each parcel of millboard, button-board button-paper, glazed paper, sheathing paper, or pasteboard.

34 G.3. c.20. Officers may take samples. By stat. 34 *G.* 3. *c.* 20. § 11. Any officer may open any such ream or bundle of paper, and take out a sample not exceeding one sheet out of each quire (paying a market-price for the same if demanded); and if he shall discover therein any paper of a different class than that which shall be denominated on the cover, the same shall be forfeited and may be seized; and the person who shall have marked any such false class, shall forfeit 50*l.* for every such offence.

Stamps to be provided, and penalty of counterfeiting the same, or selling with forged stamps. By § 8. The respective commissioners of excise shall provide proper stamps or labels for stamping or marking paper, pasteboard, millboard, scaleboard, and glazed paper made in *G. B.* and cause them to be distributed to the officers; and the said stamps or labels may be altered from time to time, as the said commissioners shall think fit.

§ 9. If any person shall counterfeit, or cause to be counterfeited any stamp, device, or label, provided or directed to be used in pursuance of this act, or the impression of any such stamp upon any wrapper of, or belonging to, or used with or upon any label affixed to any ream or quantity of paper, or upon any pasteboard millboard, scaleboard, or glazed paper; or shall have in his possession any such counterfeit stamp, knowing it to be such; or shall have in his possession or sell any paper, &c. with a counterfeit impression of any such stamp on the wrapper, or on any label affixed thereto, knowing it to be such; or shall, upon any paper not duly charged, knowingly put any wrapper, having thereon such counterfeit impression or label, he shall forfeit 500*l.*

47 G.3. sess.2. c. 30. By stat. 47 *G.* 3. *sess.* 2. *c.* 30. § 13. So much of stat. 34 *G.* 3. *c.* 20. § 9. as respects the penalty for counterfeiting, or causing to be counterfeited any stamp, device, or label, directed to be used for paper, &c. shall be repealed.

1 G.4. c.58. By stat. 1 *G.* 4. *c.* 58. § 6. The commissioners of excise in *Eng-*



pain of forfeiting 200*l.*; and every maker to whom any departure-stamp has been delivered shall, upon demand by any supervisor or officer of excise of equal rank, deliver back such stamp, with every figure, letter, and part thereof, or therewith used, on pain of forfeiting 50*l.* 1 G. 4. c. 58. who shall deliver up the same to the supervisor when required.

§ 13. If any person shall counterfeit, or cause to be counterfeited, any stamp, die, or label, or any figure, letter, or part of any stamp, die, or label, provided in pursuance of this or any other act for securing the duties on paper, millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, and scaleboard, or shall have in his possession any such counterfeit stamp, die, label, figure, letter, or part of such stamp, die, or label, knowing it to be counterfeited, or shall upon any wrapper used with any quantity of paper, &c., or upon any such label counterfeit the impression of any such stamp, die, or device, or of any figure, letter, or part thereof, or knowingly have the same in his possession; or have in his possession, or sell, any paper, &c. with a counterfeited impression on any such stamp, &c. on the wrapper, or on any label affixed thereto, or upon any wrapper thereof, or with any counterfeit label, figure, letter, or part of such label, or counterfeited printing or writing on any such label, knowing the same to be counterfeited; or shall on any paper, &c. put any wrapper or label, or part of any wrapper or label having thereon any counterfeit writing, printing, letter, figure, mark, or impression, knowing the same to be counterfeited; or shall upon any ream or parcel of paper, &c. not charged with duty, put any stamp or impression used in pursuance of this or any other act; every person so offending shall, for every counterfeit stamp, die, label, figure, letter, or part of such stamp, die, or label, forfeit 1000*l.*, and for every such wrapper, ream, or parcel 500*l.*; and every such counterfeited stamp, die, and label, figure, letter, and part of such stamp, die, or label, and every counterfeit impression, and every such wrapper, ream, and parcel, shall be forfeited, and may be seized by any officer of excise. Penalty on persons counterfeiting stamps, &c. used for securing the duties on paper, &c. having them in possession; using them on wrappers or labels; or selling paper, &c. with counterfeit stamps, &c. 1000*l.*, and for every wrapper, &c. 500*l.*

By stat. 34 *G.* 3. *c.* 20. § 9. If any person shall knowingly wrap or cover any paper in any wrapper used before, or shall knowingly affix, tie up, or add any pasteboard, millboard, scaleboard, or glazed paper, having thereon the impression of any such stamp or label, whether such stamp or label be true or counterfeit, to any pasteboard, &c. which has not been duly charged, he shall forfeit 500*l.* 34 G. 3. c. 20.

By stat. 52 *G.* 3. *c.* 143. § 7. If any person shall forge or counterfeit, or cause or procure to be forged or counterfeited, any mark, stamp, die, or plate which in pursuance of any act or acts of parliament shall have been provided, made, or used by or under the direction of the commissioners appointed to manage the duties on stamped vellum, parchment, and paper, or by or under the direction of any other person or persons legally authorised in that behalf, for expressing or denoting any duty or duties, or any part thereof, which shall be under the care and management of the said commissioners, or for denoting or testifying the payment of any such duty or duties, or any part thereof, or for denoting any device appointed by the said commissioners for the ace of spades to be used with any playing cards; or shall forge or counterfeit, 52 G. 3. c. 143. For forging stamps on paper, &c.

52 G.3. c.143. or cause or procure to be forged or counterfeited, the impression, or any resemblance of the impression of any such mark, &c. &c. as aforesaid, upon any vellum, parchment, paper, card, ivory, gold, or silver plate, or other material; or shall stamp or mark, or cause or procure to be stamped or marked any vellum, parchment, paper, card, ivory, gold, or silver plate, or other material, with any such forged or counterfeited mark, &c. &c. as aforesaid, with intent to defraud his majesty, his heirs or successors, of any of the duties or any part of the duties under the care and management of the said commissioners; or if any person shall utter or sell, or expose to sale, any vellum, parchment, paper, card, ivory, gold, or silver plate, or other material having thereupon the impression of any such forged or counterfeited mark, &c. &c. or any such forged or counterfeited impression as aforesaid, knowing the same respectively to be forged or counterfeited; or if any person shall privately or secretly use any such mark, &c. &c. which shall have been so provided, made, or used by or under such direction as aforesaid, with intent to defraud H. M., his heirs or successors, of any of the duties, or any part of the duties under the care and management of the said commissioners; every person so offending, and being thereof convicted, shall be adjudged guilty of felony, and shall suffer death as a felon, without benefit of clergy.

Punishment for making frames used in the making of paper.

By § 9. If any person (not being lawfully appointed or authorised so to do) shall make, or cause or procure to be made, or shall knowingly aid or assist in the making, or without being so appointed or authorised as aforesaid, shall knowingly have in his, her, or their custody or possession, without lawful excuse (the proof whereof shall lie on the person accused), any frame, mould, or instrument for the making of paper, with the words 'excise-office' visible in the substance of such paper, or shall make or cause or procure to be made, or knowingly aid or assist in the making any paper in the substance of which the words 'excise-office' shall be visible; or if any person (except as before excepted) shall by any



stat. 1 G. 4. c. 58. § 1. Every maker shall, from day to day, in a book, or on a paper to be delivered to him by the officer cise, and kept by such maker in some public or open part of stered premises, the number of reams and quires of paper, he number of dozens of sheets of millboard, button-board, n-paper, glazed paper, sheathing paper, pasteboard, and board, distinguishing the class of the paper, and the de- nation of millboard, &c. made daily, with their respective ated weight, reckoning twenty-six sheets of paper (two of being allowed for waste or damaged paper), for a quire con- g of twenty-four sheets when dried and finished, and thirteen s (one being allowed for waste), for a dozen sheets of mill- l, button-board, button-paper, glazed paper, and sheathing r, when dried and finished; and shall make such entries of day's work at his mill, before twelve at noon of the following which entries shall, at the end of every six weeks, be de- d to the proper officer by, and verified by the signature of maker, or his chief workman or foreman; and if any such r shall neglect to make such entry, or shall knowingly make ch book or paper any false entry, or shall remove, conceal, stroy any such book or paper, or fail to keep the same in open or public part of his entered premises, or keep the from the officers surveying his manufactory, or obstruct or nt them from examining the same, and comparing the entries in with his stock, or shall erase, deface, or alter any entry in, or shall on demand neglect to deliver in a perfect state uch book or paper, at the end of six weeks, or other period hich it has been delivered to him, or to verify the same by signature, such maker shall forfeit 200*l*.

1 G. 4. c. 58. Maker to enter in a book the quantity of paper, &c. made by him daily.

Entries to be delivered to the officer every six weeks, verified on oath.

Penalty on maker neglecting entry, or making a false entry, &c. 200*l*.

1 G. 4. c. 58.

duty for deficiency shall be made unless, &c.

board, or scaleboard shall, on comparing the quantity thereof inserted in the entries, added to the uncharged stock of such maker, be charged with duties on any deficiency of paper, &c. unless the deficiency in such entries, added to the uncharged stock, shall be more than ten *per centum* below the account kept of the paper, &c. daily made.

34 G. 3. c. 20. Duties, when paid.

And by stat. 34 *G.* 3. *c.* 20. § 13. Every maker shall, within six weeks after he shall make or ought to have made such entry, pay the duties, on pain of forfeiting double duty.

34 G. 3. c. 20. 42 G. 3. c. 94. Paper not to be removed until an account be taken.

By stat. 34 *G.* 3. *c.* 20. § 14. and 42 *G.* 3. *c.* 94. § 15. No maker shall remove or suffer to be removed from the mill where the same shall be made, any paper, &c. until such officer shall have taken an account thereof; nor shall remove any paper in any less quantity than a ream or bundle, nor without having thereon the cover in which the same was charged with the duty; nor shall remove any such pasteboard, millboard, scaleboard, or glazed paper, in any less quantity than the entire parcel in which the duty was charged, nor until weighed and charged, and stamped, marked, or labelled as aforesaid, nor the paper without having thereon the cover, nor the paper, pasteboard, &c. without the stamp or label, nor without the officer's name, together with the day and year when the duty was charged, and the several matters hereinbefore prescribed, marked, or fixed on such cover, or on such pasteboard, &c., on pain of forfeiting the same, and also 50*l* for every such offence, together with the package containing the same, and the horses, cattle, carriages, boats, barges, or other vessels used in removing thereof, which may be seized by any officer of excise.

34 G. 3. c. 20. When to be removed after weighing, and to be kept separate.

By stat. 34 *G.* 3. *c.* 20. § 15. No maker shall remove any paper, &c. from the mill or other place where the same shall have been weighed and the duty charged, in less than twenty-four hours; and every maker shall keep such paper, &c. which shall have been so weighed, separate from other paper, &c. for twenty-four hours, un-



ream or parcel with the number or letter by which the mill is distinguished, and at which the same was manufactured, and from whence received, or with the words *returned paper* (as the case may be), and shall keep all such paper, &c. separate from each other, and from all other paper, &c. on pain of forfeiting 50*l.* 56 G.3. c.103.

By stat. 1 *G.4. c.58.* § 9. When any maker shall receive into his possession, or have delivered on his entered premises, paper, millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard, charged with duty at any other mill, or sent out by such maker, and returned from any customer, he shall write or print on, and distinguish every ream or parcel with the number or letter by which the mill is distinguished at which the same was made, or with the word "*returned*," as the case may be; and shall keep all such paper, &c. separate from each other, and from all other paper, &c., and shall, on the next visit of his surveying officer, give him notice in writing thereof, specifying the progressive number and weight of each ream or parcel, the number of the mill where made, the date of charge, the date of departure-stamp, and the person from whom, and place from whence, and day when received; and shall then produce to the officer all such paper, &c. and assist him in taking an account thereof; and such maker shall, before he remove any such paper, &c. write or print on the label of the wrapper the number of his mill, and fix such impressions of the departure-stamp as directed in case of paper made at his mill; and if any such maker shall neglect to give such notice, or shall give a false notice, or neglect to produce all such paper, &c., or to assist the officer, or to comply with any other of the directions aforesaid, he shall forfeit 100*l.* for every such ream or parcel; and the same shall be forfeited, and may be seized by any officer of excise.

1 G.4. c.58. Paper, &c. returned shall be marked with the number or letter by which the mill is distinguished, or with the word "returned;" and be kept separate, and notice given to the officer who shall take an account thereof; and on being removed the departure-stamp shall be affixed. Penalty 100*l.* for every ream or parcel where directions are not complied with.

By stat. 34 *G.3. c.20.* § 17. Every maker shall keep all paper, &c. which hath been charged and stamped, marked or labelled, apart from all paper which hath not been charged and stamped, marked or labelled, and also all paper of one class separate from paper of another class, on pain of forfeiting 50*l.* 34 G.3. c.20. Paper stamped to be kept separate.

§ 18. It shall be lawful for any officer of excise, by day or night (but if in the night in the presence of a constable), to enter into any mill, work-house, or other place entered or made use of by any maker of paper, &c. and by weighing, tale, or otherwise, to take an account of the kinds and quantities of paper, &c. which shall have been made, and shall make a report thereof in writing to the commissioners of excise, or whom they shall appoint, leaving a copy of such report under his hand with such maker (if demanded in writing); and such report shall be a charge upon such maker; and if such officer shall refuse to give or leave a copy of his report in writing at the time of taking such account (being demanded as aforesaid), he shall, for every such offence, forfeit 40*s.* to such maker. Officers may enter and take an account.

By stat. 10 *Ann. c.* 19. § 50. The officers shall be permitted to take an account of the rags, cordage, and other materials for making paper, pasteboard, millboard, and scaleboard, and of the paper for printing, painting, or staining, and of the respective proceedings in making, printing, painting, or staining thereof. 10 Ann. c.19.

By stat. 1 *G.4. c.58.* § 3. It shall be lawful for the officers of 1 G.4. c.58.

1 G.4. c.58.

Officer to take an account of stock.

Maker to keep the different classes of paper, &c. charged with duty from that not charged, so as the officer may easily see the departure-stamp, and take account of number and weight of the reams, &c.

Penalty on obstructing officer, &c. 100*l*.

excise, when occasion shall require, or they may think fit, t account of the stock of paper, millboard, button-board, b paper, glazed paper, sheathing paper, pasteboard, and scalel and of the quantities of each in the possession of the n thereof; and every such maker shall at all times place and his stock of paper, &c. charged with duty separate from which has not been charged, and also distinct according class or denomination, and shall keep the stock charged duty so that the officer may without difficulty see the depa stamp thereon, and take an account of the number of rea paper and parcels of millboard, button-board, button-paper, g paper, sheathing paper, pasteboard, and scaleboard, charg uncharged, and the weight thereof, with the assistance of maker, or a sufficient number of his servants, which assis the maker, at the request of the officer, is to give to the u of his power; and if any such maker, or other person, sha struct or hinder any officer of excise in inspecting or taking account, or shall neglect, when required, to give such assist or to keep his stock in the manner aforesaid, or concea part thereof, every such maker or person so offending forfeit 100*l*.

34 G.3. c.20. Maker to keep scales and weights;

By stat. 34 *G.* 3. *c.* 20. § 19. Every maker shall keep suff and just scales and weights, and shall permit such officer t the same; and if he shall not keep such, or shall not so perm shall use any false or insufficient scales or weights, or pr any device to prevent such officer from taking the true w he shall for every such offence forfeit 100*l*. together with insufficient scales and weights, which may be seized by any o of excise.

and to assist in weighing.

§ 20. And every maker, when required by such officer, shall a sufficient number of his servants, assist in weighing and taki account, and in re-weighing, on pain of forfeiting 50*l*.

Turn of the

§ 21, 22. In weighing, the turn of the scale shall be in fav



receiving it, be an entire ream or bundle [ream by stat. 42 *G.* 3. *c.* 94. § 15.], and enclosed in a wrapper stamped or labelled as aforesaid, together with the officer's name, and day and year when the duty was charged, and the class marked thereon, on pain of forfeiting 50*l.* together with such paper, which may be seized by any officer of excise.

34 G.3. c.20. but in an entire ream, &c.

§ 25. and stat. 1 *G.* 4. *c.* 58. § 11. No stationer or dealer in paper, millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard, nor any other person, shall return to any maker of paper, &c. nor to any mill, workhouse, or place to him belonging, nor to any other place, to or for the use of any such maker, any wrapper or label which has been before used as a wrapper or label to any paper, &c. and marked with the stamps or impressions directed by this act; but every such stationer or dealer, or other person, shall, upon opening any ream or parcel of paper, &c. forthwith cancel and obliterate the label, and the stamps, and impressions thereon, and on the wrappers, without taking such label from the wrapper; nor shall any maker of paper, &c. receive any such wrapper or label which has been before used as a wrapper or label to any quantity of paper, &c., or in or with which any paper, &c. has been removed by any maker, on pain that every such stationer, dealer or maker, or other person offending, shall forfeit (100*l.* by 34 *G.* 3., 200*l.* by 1 *G.* 4.) for every such wrapper or label which shall be forfeited, and may be seized by any officer of excise.

34 G.3. c.20. 1 G.4. c.58. Stationers not to return wrappers to makers, but shall cancel them.

Makers not to receive such wrappers.

Penalty, 200*l.*

By stats. 34 *G.* 3. *c.* 20. § 26. and 1 *G.* 4. *c.* 58. § 11. Nothing herein shall extend to inflict the said penalty of (100*l.* by 34 *G.* 3., 200*l.* by 1 *G.* 4.) for not destroying or returning any wrapper which hath been opened, containing therein the same paper, &c. which was removed by the maker, and which is returned to him as disliked, or for not destroying or returning any label affixed to such wrapper.

Not to extend to wrappers returned with paper, &c. disliked on opening, and refused.

By stat. 1 *G.* 4. *c.* 58. § 16. Every retailer, stationer, or dealer in paper, or other person who shall have bought or agreed for any paper, millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard, forfeited or liable to seizure, and shall inform any officer of excise of the same, shall, on the condemnation thereof, and conviction of the offender in the penalties, be paid by the officer seizing, the value of the paper, &c. so seized and condemned, and for which he shall have paid, or be liable to pay, and shall pay, and such payment shall be deemed a part of the expenses attending such seizure.

1 G.4. c.58. Persons buying paper liable to seizure shall, on giving information, receive the value paid by them.

By stat. 56 *G.* 3. *c.* 103. § 20., after reciting that by 34 *G.* 3. *c.* 20. § 25. stationers and dealers in paper, upon opening any ream or bundle of paper, are required to destroy the wrapper in which it was enclosed; and that by reason of the stamp or impression directed by this act being put upon a label only, it is not requisite, for security of the duty on paper, to destroy the wrapper or cover in which any such paper was enclosed, it is enacted, that so much of the said act of 34 *G.* 3. shall be repealed.

56 G.3. c.103. So much of 34 G.3. c. 20. as requires the destroying of wrappers on opening bundles, repealed.

By stat. 34 *G.* 3. *c.* 20. § 27. All paper, pasteboard, millboard, scaleboard, and glazed paper, and all materials and utensils for the making thereof, in the custody of the maker, or other person in trust for him, shall be *chargeable* with all debts and duties for *paper in arrear and owing by such* maker, and shall also be sub-

34 G.3. c.20. Paper and utensils, &c. liable to the duty.

4 Geo. c. 20.

ject to all penalties and forfeitures incurred for any offence against this act. *See also* stat. 28 *G.* 3. *c.* 27. § 21.

roof of the aper being of ie class marked , lie on the ner.

§ 35. If any question shall arise whether any paper is belonging to the class marked on the cover or wrapper (although such paper shall appear to have been entered in the officer's books as belonging to such class,) the proof thereof shall lie on the owner or claimant, and be decided by the oaths of two skilful and experienced persons.

bstructing fficers.

§ 36. If any person shall assault, oppose, molest, obstruct, or hinder any officer in the due execution of this act, he shall forfeit 100*l.*

xford and ambridge.

§ 37. 39, 40, 41. and 43 *G.* 3. *c.* 69. *Sched.* (C). All paper of the first denomination used in printing books at *Oxford* or *Cambridge*, in *Latin*, *Greek*, Oriental, or Northern languages; and also bibles, testaments, psalm-books, or books of common prayer, printed either in those universities, or by the king's printer, shall have drawbacks allowed on certain conditions.

wing for 2 G.3. c.54.

§ 47. Nothing herein shall extend to alter or affect the provisions contained in 32 *G.* 3. *c.* 54.

G.4. c.58. aper, &c. deroyed by fire wreck, maker, proving loss efore quarterssions or comissioners of cise, and that e duty was aid, may reover the duty producing a rtificate to the llector of exse.

By stat. 1 *G.* 4. *c.* 58. § 22. The provisions in stat. 34 *G.* 3. *c.* 20. § 49. respecting an allowance for damage sustained from the loss of paper, &c. arising from the sinking of vessels conveying the same, is repealed; and it is enacted, that if any quantity of paper, millboard, &c. shall be inevitably destroyed, or so far inevitably damaged by fire, or by the unavoidable wreck of, or other unavoidable injury to the vessel or barge in which such paper, millboard, &c. shall be transporting, or be shipped on board to be transported, as that such paper, millboard, &c. shall be no longer capable of use, but must be wholly destroyed or re-manufactured, and charged again with duty, it shall be lawful for the maker, being at the time the proprietor and owner, to make proof of such loss, and the cause thereof, on the oath of one witness, and of the duty having been duly paid, before the justices of the county where



tended to be made to such commissioners, fourteen days, at the least, before the beginning of such quarter sessions, or before such application to such commissioners, and shall apply for such relief within one month after such loss, or at the next general quarter sessions after the expiration of such month. 1 G. 4. c. 60.

§ 23. Nothing in this act shall extend to repeal or alter any acts in force, except so far as such acts are repealed, altered, or controlled by this act. Other acts not affected, unless hereby altered.

By stat. 34 *G.* 3. *c.* 20. § 50. The person who shall sustain such loss shall, three days before such sessions, give or leave notice in writing thereof with the collector of excise of the district, and of his intention of applying to such sessions for such allowance. 34 G. 3. c. 20. Notice of application for such allowance.

And all the duties are allowed for such glazed or other press papers for clothiers and hotpressers as shall be *bonâ fide* used and consumed in the pressing of woollen cloths and stuffs in *G. B.*, 48 *G.* 3. *c.* 69. *Sched.* (C). Allowances to clothiers and hotpressers.

By stat. 42 *G.* 3. *c.* 94. § 6. Every person intending to claim any such drawback or allowance for glazed paper or press-paper shall, before he shall begin to make use thereof, produce the same to the officer of excise in the original cover or wrapper in which it was charged with the duty, and give to such officer a note in writing, specifying the day and hour on which he intends to produce such glazed or press-paper, and also the quantity thereof, and the name and residence of the maker or person from whom and the time when it was received; and such person shall untie and open the same in the presence of such officer, who shall take account thereof, and destroy the duty-stamp on the covers or wrappers; and as soon as such paper shall have been so long used as to be incapable of being again employed for any purpose, upon application to the proper collector (such application not to be oftener than twice in each year), stating in writing the actual quantity of such glazed paper and press-paper so used as aforesaid, and making oath before such collector (who is empowered to administer the same) of the real quantity thereof so used, that the same has been actually employed in the pressing of woollen cloths or stuffs by the party applying for such allowance, and for no other purpose whatsoever, and that all such paper, and every part thereof, is by such use become unfit for any other purpose, and that no drawback has been before received for such paper or any part thereof, then such collector shall allow a drawback of the duties charged or paid for such glazed paper or press-paper, without any fee or deduction. 42 G. 3. c. 94. On certain conditions.

§ 17. Any person convicted of wilfully taking a false oath, in order to obtain a drawback or allowance, shall be liable to the pains and penalties of perjury. False oath for drawback, perjury.

And by stat. 48 *G.* 3. *c.* 69. For every yard square of paper which shall be *printed*, *painted*, or *stained* in *G. B.* to serve for hangings or other uses (over and above the duties payable for such paper before the printing thereof), shall be paid by the printer, painter, or stainer, 1½*d.* 48 G. 3. c. 69. Duty on painted paper.

By stat. 10 *Ann.* *c.* 19. § 43. All persons who shall make any paper, pasteboard, millboard, or scaleboard, or *print*, *paint*, or *stain* *any paper* for sale, or not for sale, shall leave notice in writing at the next excise-office, of his name and place of abode, and of the 10 Ann. c. 19. Paper-stainer to enter his name and place of abode.

10 Ann. c. 19. places usually made use of in making, printing, &c. the same, on pain of forfeiting 30*l.*

§ 44. No person shall use any drying-place, or other place for making the same fit for use, other than such of which he hath first given notice in writing to the officer, on the penalty of 20*l.*

12 G. 3. c. 94. By stat. 42 *G.* 3. *c.* 94. § 11 & 12. Certain regulations are enacted for regulating the making of pasteboard.

By § 13. No maker of pasteboard shall carry on the business of a maker of paper, nor carry on the business of making pasteboard, within one quarter of a mile of any mill or manufactory for making paper, on pain of forfeiting 100*l.*

§ 14. Pasteboard made in *G. B.* of paper that has been duly charged with the duties, shall not be charged with any further duties.

56 G. 3. c. 103. By stat. 56 *G.* 3. *c.* 103. § 13. The provisions of 42 *G.* 3. *c.* 94. § 11, 12. respecting the materials from which pasteboard is to be made, shall apply only to such makers of pasteboard as are not makers, or concerned in the trade of a maker of paper, millboard, button-board, button-paper, glazed paper, or sheathing paper; and it shall be lawful for every maker of paper, millboard, button-board, button-paper, glazed paper, or sheathing paper, to make at his entered paper-mill any pasteboard, subject to the duties herein mentioned, according to the quality thereof, from paper, millboard, button-board, button-paper, glazed paper, or sheathing paper, made by him at such mill, before the same shall have been charged with the duty.

§ 15. There shall be allowed to every maker of pasteboard, not being a maker, or concerned in the trade of a maker of paper, millboard, button-board, button-paper, glazed paper, or sheathing paper, who shall make pasteboard, and be charged with the duties thereon, from paper, millboard, button-board, button-paper, glazed paper, or sheathing paper, for which the duties shall have been paid, and which shall have been taken account of by the

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sence of the proper officer, and is mentioned in such account; and if any such maker shall neglect to take out such licence, or to make such entry at the office of excise, or to render such quarterly account, or shall not make true entries and accounts, or any pasteboard-maker for cards shall use any other than first-class paper for that purpose, or shall make or sell pasteboard, except cut into cards not exceeding the size of 64 square inches, or playing cards, he shall forfeit 100*l.*; and no such maker who shall fulfil the conditions before-mentioned, shall be liable to any other regulations relating to makers of pasteboard. 1 G. 4. c. 58. Penalty on neglect, 100*l.* Not liable to any further regulations relating to pasteboard-makers.

§ 14. Every maker shall daily enter, or cause to be entered, in a book to be provided by him for that purpose, a particular account of the quantity and weight of each class of paper, and of each denomination of millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, and scaleboard, and of the progressive number of every ream and parcel thereof, which shall be sold or sent out from his mill, and the date of the impression of the departure-stamp affixed thereon, and of the place to which, and the conveyance by which, the same shall be sent; and shall daily, or on every survey of any officer of excise of his mill or premises, deliver to him an account in writing, signed by such maker or his foreman, containing the progressive number of reams of paper, and parcels of millboard, &c. sent out on that day, or since the last survey of an officer of excise; and such book shall be at all times kept on the entered premises of such maker, open to the inspection of any officer of excise, of superior rank to a supervisor, and to any supervisor or officer of equal rank, when required by written order of a collector, or other officer of excise of superior rank to a supervisor, who shall survey the same; and if any maker shall neglect to keep such book, or make such entries therein, or shall make false entry therein, or alter, obliterate, or destroy any such entries, or tear thereout, or destroy any of the leaves or part of such book, or shall hinder or obstruct any such officer of excise from examining such book, or making extracts therefrom, or neglect to deliver to the officers of excise such paper, he shall forfeit 200*l.* Maker to enter in a book an account of the quantity and weight of each class of paper, &c. sold or sent from his mill, with the date of the departure-stamp; and deliver an account of the progressive numbers of reams, &c. sent out since last survey. Book to be open to inspection. Penalty for neglect or obstruction, 200*l.*

By stat. 56 *G.* 3. *c.* 103. § 19. For enabling the officers of excise to make an annual balance of the whole quantity of paper, &c. made by any maker of paper in the preceding year, and of the quantity thereof charged with duty, every maker, on the 5th of *July* in each year, or at such times as he shall leave off business, or transfer it to any other person not being a partner with him, on notice for that purpose given by the officer of excise, to such maker, seven days before such account shall be taken and balance made, shall lay, and place the whole of his uncharged stock and loose paper, reduced into reams and odd quires, and millboard, button-board, button-paper, glazed paper, sheathing paper, and pasteboard, in dozens and odd sheets, in such order that the same may be conveniently numbered, weighed, or otherwise taken account of by the officers; and every maker shall, with his servants or workmen, give all needful assistance to the officers in taking account of such paper, &c. as by such officers may be found necessary; and if any such maker, or other person, shall obstruct or hinder any officer of excise in taking such account, or neglect to place and *keep his uncharged or loose* paper, &c. in the order 56 G. 3. c. 103. Makers to place their uncharged stock yearly in such manner as to enable the excise-officers to make an annual balance of quantity of paper, &c. made and charged with duty. Obstructing officers.

56 G.3. c.108. Penalty.

aforesaid, or shall neglect, when required, to give the officers such assistance, or shall hide or conceal any such paper, &c. from the inspection of the officers, or by any contrivance prevent them from taking a true account thereof, such maker shall forfeit 200*l.*

1 G.4. c.58. Account of uncharged stock to be delivered to officer at his request.

By stat. 1 *G.*4. *c.* 58. § 19. Every maker of paper, &c. shall, at the time of making the annual balance, deliver to the officer, at his request, a true account, signed by him or his foreman, of his uncharged stock of paper, millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, and scaleboard, distinguishing the class, and denomination, and quantity of each, and the place and condition in which the same are deposited; and if any maker shall deliver an untrue account, or shall not make out, and upon request deliver such account, he shall forfeit 200*l.*

Penalty, 200*l.*

1 G.1. st.2. c.36. Officers shall mark every sheet.

By stat. 1 *G.*1. *st.*2. *c.*36. § 17. Before any paper shall be printed, painted, or stained, the officer shall be permitted to take an account of the quantities and dimensions of all paper in the possession of any such printer, &c.; and shall mark every sheet and piece with a stamp, to denote that such account has been taken.

26 G.3. c.78. And to make entry of paper.

By stat. 26 *G.* 3. *c.*78. § 2. Every paper-printer, painter, or stainer shall, once in every fortnight, make entry in writing upon oath, or on the oath of his chief workman, at the next office for the said duties, of all paper by him printed, painted, or stained within that time, and such entry shall contain the kinds and quantities thereof respectively, on pain of 50*l.*

Duties to be paid.

§ 3. And every stainer shall, within a fortnight after, pay the duties for all such paper, on pain of forfeiting double duty; and no person, after default in payment, shall sell or deliver out any paper until he hath paid the duty, on pain of forfeiting double the value thereof.

Mark on paper before painting.

§ 5. Before any paper shall be printed, painted, or stained, the officer shall be permitted to take account of the dimensions, and shall stamp or seal every sheet and piece, to denote that such account hath been taken; and where a single sheet shall be painted, the same shall be produced to the officer, who shall take an account



By stat. 26 G. 3. c. 78. § 8. Pieces cut into samples or remnants shall be stamped by the officer, to whom six hours' notice shall be given by such stainer of the time he intends to cut the same. 26 G. 3. c. 78. Pieces cut into samples.

By stat. 1 G. 1. st. 2. c. 36. § 18. No person shall remove any such painted paper until the officer hath taken an account of the quantity thereof, and until every piece or parcel shall be marked or stamped, on pain of 20*l.*; and the said paper being found in the possession of any stationer or other dealer, or other persons for his use, shall also be forfeited. 1 G. 1. st. 2. c. 36. Not to be removed until an account is taken.

By stat. 26 G. 3. c. 78. § 11. Every stainer shall keep all paper by him printed, painted, or stained, and which hath not been stamped and charged with the duties, separate from the paper that hath been charged, on pain of 50*l.* 26 G. 3. c. 78. Paper unsurveyed to be kept separate.

§ 12. If any printer, &c. shall fraudulently hide or conceal any printed, painted, or stained paper, with intent to defraud his majesty, he shall forfeit 100*l.* Concealing paper.

§ 16. No stainer, &c. shall keep any paper which hath been marked and stamped, in any unentered place; and if any paper which hath been printed, painted, or stained, whether marked or stamped or not, shall be found in the possession of any stainer in such unentered place, he shall forfeit 50*l.* and also the paper, which may be seized. Keeping paper in unentered places.

§ 17. Upon oath made before two commissioners within their limits, or one justice, by any person, that he hath reason to suspect or believe that any such paper is in the custody of any stainer, or other person trading therein, without having thereupon such stamp as by this act is directed, the said commissioners or justice may issue their warrant or order, authorising any officer of the said duties, with the assistance of a constable or other peace-officer, in the day-time, to search for the same, and to open doors, chests, trunks, and packages, and to seize such paper, and to bring the same to the next excise-office, which shall be forfeited; and if any person shall obstruct any officer from entering any such place, and in seizing or carrying away such paper, he shall forfeit 50*l.*: Provided, that no remnant, being of less length than shall be expressed by the frame-mark thereon, so found having the stamp at one end thereof, shall be forfeited by reason of not having the stamp at both ends thereof. Suspected paper may be seized.

§ 18. To prevent fraud by adding to the length of any piece of stained paper, after the same hath been stamped at both ends, if any piece or remnant of stained paper, not having such stamp and frame-mark thereon, or at one end thereof only, and being of as great or greater length than shall be expressed by such frame-mark, or having such marks at both ends thereof, shall be of a greater length by half a yard or more than expressed by such frame-mark, the same shall be forfeited, and may be seized, and the stainer, &c. or dealer in whose possession the same is found, shall forfeit 50*l.* Paper marked at one end only forfeited.

§ 13. The commissioners of the duties shall provide numbers or marks to denote the measure, and stamps or seals to denote the charging the duties; and if any person shall counterfeit or forge any frame, number, or mark, used by the officers, or the impression of the same upon any paper to be printed, painted, or stained, he shall forfeit 100*l.*; or if he shall counterfeit or forge any stamp *or seal to resemble those provided* in pursuance of this act, Counterfeiting or forging stamps, &c.

26 G.3. c.78.

or the impression of the same upon any paper, in order to defraud H. M., he shall be guilty of felony without benefit of clergy; and if any person shall sell any paper with such counterfeit stamp, knowing the same, with like intent, he shall forfeit 100*l*. But see stat. 52 *G.* 3. *c.* 143. *ante*, p. 261.

Defacing marks.

§ 14, 15. If any stainer, &c. shall wilfully cut out, obliterate, or deface the frame-mark, number, or mark, or wilfully suffer the same to be done; or shall affix upon any piece or sheet of paper any frame-mark, or stamp, or seal, which shall have been before affixed on any other piece or sheet of paper, with intent to defraud H. M., he shall forfeit 50*l*. and such piece or sheet.

Exportation.

§ 19. Printed, painted, or stained paper may be exported on certain conditions specified in the act; but the same shall not be permitted to be packed up in order to be exported, not having the stamps by this act directed, and also the frame-marks plain at both ends of every piece, where a single sheet; and the officer who shall attend to see such paper packed up shall measure the same, and see that the said stamps and frame-marks are cut off from both ends of every piece or single sheet.

Penalties how to be recovered.

§ 20. All penalties, fines, and forfeitures shall be sued for, recovered, levied, and mitigated as by the laws of excise (*a*), or in the courts at *Westminster*, half to the king and half to him who shall inform or sue.

10 Ann. c.19. 28 G.3. c.37. Utensils liable.

And by stat. 10 *Ann. c.* 19. § 55. and 28 *G.* 3. *c.* 37. § 21. all paper, materials, and utensils, in custody of the maker, or of any to his use, or in trust for him, shall be liable to all duties in arrear, and to all forfeitures relating to the said duties, in the same manner as if the offender or debtor were the lawful owner.

For the stamp-duties on paper, see title **Stamps**, Vol. V.

Disputes between paper-makers and their workmen, see that head, title **Servants**, Vol. V.

§ III. (13.) Plate.

[redacted]

two pennyweights and under two ounces in weight, or any quantity of silver exceeding five pennyweights and under thirty ounces in weight, in any one separate and distinct ware or piece of goods, is, or are, or shall be manufactured, shall be required or liable to pay for or upon any such licence as aforesaid the sum of 2*l.* 6*s.* by the said act 55 *G.* 3. *c.* 30. 59 G.3. c.32.

§ 3. And for obviating all disputes touching the quantity or weight of gold or silver respectively manufactured or contained in any ware or piece of goods, it is enacted, that all goods, wares, and merchandise which shall be sold or offered for sale, or taken in pawn, or delivered out as and for gold or silver respectively, shall be deemed and taken to be gold or silver respectively, within the intent and meaning of the said recited act of the 55th year aforesaid, and of this act, and also of 43 *G.* 3. *c.* 69. and of all other acts now or which shall hereafter be in force relating to his majesty's revenue of excise.

And by stat. 43 *G.* 3. *c.* 69. *Sch.* (A). Every person trading in, vending, or selling any gold or silver plate, or any goods in which any quantity of gold of the weight of two ounces or upwards, or any quantity of silver of the weight of thirty ounces or upwards, in one distinct ware, is manufactured; and every pawnbroker trading in, vending, or selling gold or silver plate, or goods or wares in which any quantity of gold or silver is manufactured, or taking in or delivering out pawns of such plate, goods, or wares; and every refiner, for every such licence - - - - - 5 15 0 43 G.3. c.69.

And by stat. 55 *G.* 3. *c.* 30. the further sum of - - 5 15 0 55 G.3. c.30.

[N. B. The duties by stat. 43 *G.* 3. *c.* 69. are granted without limitation of time; those by stat. 55 *G.* 3. *c.* 30. were limited to 5th *April* 1819, but by stat. 3 *G.* 4. *c.* 27. were continued until 5th *July*, 1826.]

By stats. 31 *G.* 2. *c.* 32. § 4. and 32 *G.* 2. *c.* 24. § 3. The said licences shall be renewed annually ten days before the end of the year, on pain of forfeiting 20*l.* 31 G.2. c.32. 32 G.2. c.24.

But by stat. 31 *G.* 2. *c.* 32. § 7. Persons in partnership, carrying on their trade in one house or shop only, shall not be obliged to take out more than one licence for one year. 31 G.2. c.32. Persons in partnership.

By stat. 53 *G.* 3. *c.* 103. Upon the death of any person licensed, or upon the removal of any person from the house or premises in which his licence shall authorise him to make or manufacture, deal in, vend, or sell any exciseable commodity, any one of the commissioners of excise, or the proper collector and supervisor, may authorise the executors, administrators, or the wife or child of the deceased person, or the assignee or assigns of the person removing, to carry on the trade in the same house or premises during the residue of the term for which such licence was granted. 53 G.3. c.103. Transfer of licences on death or removal.

By stat. 32 *G.* 2. *c.* 24. § 1. No person shall be liable to take out any licence for trading in, vending, or selling any quantity of gold not exceeding two pennyweights, or of silver not exceeding five pennyweights, in any one separate and distinct ware or piece of goods. 32 G.2. c.24. Not to extend to small quantities.

By stat. 31 *G.* 2. *c.* 32. § 6. All persons using the trade of selling gold or silver plate, or any goods or wares composed of gold or 31 G.2. c.32. Auctioneer and

31 G.2. c.32.

silver, or in which any gold or silver shall be manufactured; and also all persons employed to sell any gold or silver plate, or any such goods or wares aforesaid at any auction or public sale, shall respectively be deemed traders in, sellers, or venders of gold or silver plate, and shall take out a licence for the same.

others selling plate to be deemed traders.

32 G.2. c.124. Pawnbrokers and refiners.

By stat. 32 *G.* 2. *c.* 24. § 4. No pawnbroker shall (either publicly or privately) trade in or sell any gold or silver plate, or any goods or wares in which any gold or silver shall be manufactured; nor shall any person use the trade of a refiner of gold or silver, without taking out and renewing yearly such a licence.

§ 4. And every such pawnbroker and refiner shall be deemed to use the trade of selling or vending gold or silver plate.

§ 4. If any pawnbroker shall trade in or sell any gold or silver plate, or any goods or wares in which any gold or silver shall be manufactured, or shall practise the business of a refiner, without such licence, or shall not have renewed the same yearly, and made such payment as aforesaid, he shall forfeit 20*l.*

31 G.2. c.32. Unto what places the licence shall extend.

By stat. 31 *G.* 2. *c.* 32. § 7. No licence shall authorise any person to whom the same may be granted, and who shall sell such gold or silver plate in shops, to trade in or sell such gold or silver plate in any other shop or place, except in such houses or places thereunto belonging, wherein he shall inhabit and dwell at the time of granting such licence, or in booths or stalls at fairs or markets.

Prosecution for offences.

§ 11. Prosecutions for offences may be in the courts at *Westminster*, or otherwise; if within the limits of the chief office of excise in *London*, the same may be before three commissioners of excise; and, in case of appeal, before the commissioners of appeal; and elsewhere, before two justices residing near to the place where the offence was committed; and if either informers or defendants shall think themselves aggrieved by the judgment of such justices, it shall be lawful for them to appeal to the next quarter-sessions, who shall hear and determine the same, and whose judgment shall be final.

§ 12. The said commissioners of excise and commissioners for

therein mentioned, but amongst whom persons trading in or selling plate are not included. 6 G.4. c.81.

By stat. 6 *G.* 4. *c.* 118. (passed 5th *July*, 1825,) § 2. From and after the 5th *July*, 1825, the duties and sums of money granted and made payable by any act or acts now in force upon or in respect of licences to persons trading in, vending, or selling in *Great Britain* any gold or silver plate, and also upon or in respect of licences to pawnbrokers trading in, vending, or selling gold and silver plate, or taking in or delivering out pawns of such plate, and also the duty upon or in respect of licences to refiners of gold or silver in *Great Britain*, shall continue in force, and shall be paid and payable to, and shall be under the management of the commissioners of the stamps in *Great Britain* for the time being, and shall be deemed and taken to be stamp-duties. 6 G.4. c.118. Former duties on licences continued, and declared to be stamp-duties, and put under the management of the commissioners of stamps.

§ 3. And for the obviating all disputes touching the quantity or weight of gold or silver respectively manufactured or contained in any ware or piece of goods in *Great Britain*, it is enacted, that all goods or wares which shall be sold or offered for sale, or taken in pawn, or delivered out as and for gold or silver respectively in any part of *G. B.*, shall be deemed and taken to be gold or silver respectively within the intent and meaning of this act, or any other act or acts: Provided, that gold or silver lace, or gold or silver wire, thread or fringe, shall not be deemed gold or silver plate within the meaning of this act or any other act or acts, and that it shall not be necessary for any person or persons trading in or selling or vending gold and silver lace, or gold or silver wire and thread or fringe, in *G. B.*, to take out any licence for trading in or selling gold or silver plate in *G. B.* Gold or silver offered for sale, &c. to be deemed as such within the meaning of this act. Gold or silver lace not deemed plate.

§ 4. All and singular the powers and authorities, rules, regulations, and directions in anywise relating to the said duties upon gold and silver plate, or to the granting any such licences as aforesaid, or to the duties upon or in respect of all or any of such licences respectively contained in the said herein-before recited acts or any of them, or in any other act or acts relating to such duties or licences respectively, in force on or immediately before the passing of this act (except so far as the same shall be inconsistent with the express provisions of this act), shall be used, executed, exercised, and put in force for the securing and collecting of any such duties as aforesaid, and for the granting of any such licences respectively, by the commissioners of stamps in *G. B.* and *Ireland* respectively, as fully and effectually, to all intents and purposes, as if all and singular such powers and authorities, rules, regulations, and directions had been originally given and granted to such commissioners of stamp duties respectively, and as if the same were repeated and re-enacted in this act; and it shall be lawful for such commissioners of stamps respectively to grant all such licences, and to manage all such duties respectively, in like manner as the commissioners of excise respectively might have done before the said 5th day of *July*, 1825, under and by virtue of any of the said acts; and all fines, penalties, and forfeitures imposed by any such act or acts in respect of any matter or thing to be done, or refused or neglected to be done, by any person or persons, in anywise relating to such duties or any of them respectively, shall be incurred and forfeited, and shall and may be sued for, recovered, levied, mitigated, and applied upon or in respect of the Powers of former acts relating to the duties on gold and silver plate, and to licences, shall be put in force by the commissioners of stamps in G.B. and Ireland.

6 G.4. c.118.

doing, or neglecting, or refusing to do, any acts, matters, or things relating to the said duties and licences respectively, by this act placed under the management of the said commissioners of stamps.

Powers of former acts in relation to duties under the commissioners of stamps, as far as they can be applicable to the duties on gold and silver plate, and to licences, shall be put in force with respect to the duties placed under their management.

§ 5. All powers, provisions, clauses, regulations, and directions, and all fines, forfeitures, pains, and penalties contained in and imposed by any act or acts in force in *G. B.* and *Ireland* respectively immediately before the passing of this act, in relation to any of the duties under the management of the commissioners of stamps in *G. B.* and *Ireland* respectively, so far as the said acts or any of them can be made applicable to the said duties on gold and silver plate, and to the duties on such licences as aforesaid respectively, shall be of full force and effect, and shall be observed, applied, enforced, and put in execution with respect to the duties by this act placed under the management of the said commissioners of stamps in *G. B.* and *Ireland* respectively, and for the stamping and marking such plate, and the vellum, parchment, and paper on which any such licences shall be granted, and for preventing, detecting, and punishing all frauds, forgeries, and other offences relating to the said duties, as fully and effectually, to all intents and purposes, as if all such powers and authorities, rules, regulations, and directions, provisions, fines, pains, penalties, and forfeitures, had been repeated and specially enacted in this present act, and had been applied to the duties by this act continued in force, and placed under the management of the said commissioners of stamps respectively.

Commissioners of stamps in Ireland may stay proceedings for the recovery of penalties, &c.

§ 6. From and after the said 5th day of *July*, 1825, it shall be lawful for the commissioners of stamps in *Ireland* to stay the proceedings in any prosecution commenced by their direction for the recovery of any penalty or penalties incurred by any person or persons under this act, or under any other act or acts in force immediately before the passing of this act, relating to any of the duties under the management of the said commissioners of stamps, on payment of part only of any such penalty or penalties, with or

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granted at any other time in the year 1828, or in any subsequent year, shall be dated on the day on which such licence shall be actually granted; and every such licence, whatever may be the date thereof, shall have effect and be in force from the day of the date thereof, until and upon the 31st day of *July* then next following, and shall then cease and determine. 9 G.4. c.49.

§ 13. It shall be lawful for the commissioners of stamps, and they are hereby authorised and required, to make and pay, in such manner and under such regulations as they shall direct, to any and every person who shall have obtained and be in possession of any certificate or licence which, under the provisions of this act, shall cease and determine before the expiration of the full term for which such certificate or licence shall have been originally granted, an allowance of a proportionate part of the stamp-duty originally paid on such certificate or licence, according to the term or period then to come or unexpired thereon. Proportionate allowance to be made upon certificates and licences unexpired

§ 14. Provided, that no such allowance shall in any case be made to any person who shall not take out a new certificate or licence under the provisions of this act, nor unless the certificate or licence, in respect of which such allowance shall be claimed, shall be delivered up to the said commissioners of stamps, or their proper officer, on or before the 5th day of *April*, 1829; and the said commissioners of stamps, or their officer, shall cancel all certificates or licences so delivered up, and on which such allowance shall be made. Allowance not to be made in certain cases.

By stat. 6 *G.* 4. *c.* 111. Certain duties of customs are imposed upon plate imported. 6 G.4. c.111. Duties.

By stat. 1 *G.* 4. *c.* 14. § 1. No drawback or allowance shall be paid, nor any debenture given, on the exportation to foreign parts of any plate of gold, wrought or manufactured in *G. B.* into rings. 1 G.4. c.14. No drawback allowed on export of gold made in G.B. into rings; nor on gold manufactured in G.B., unless above 2 oz.

§ 2. No drawback or allowance shall be paid, or any debenture given, after the 1st day of *June*, 1820, on the exportation to foreign parts of any articles of gold wrought or manufactured in *G. B.*, unless the same shall exceed the weight of two ounces.

And see tit. Plate, Vol. III.

§ III. (14.) Salt.

[5 G.4. c. 65. — 6 G. 4. c. 81. — c. 111.]

By stat. *5 G. 4. c. 65.* intituled *An act to repeal the duties and laws in respect of salt and rock-salt*, after reciting that it was expedient that all duties, drawbacks, bounties, and allowances payable upon, or for or in respect of salt and rock-salt, and salted flesh and fish (except as hereinafter excepted and provided for), and mineral alkali, in any part of the U. K., and upon licences for making oxymuriatic acid or oxymuriate of lime, and all laws, provisions, and regulations relating thereto, in and throughout the U. K. of *G. B.* and *Ireland*, should cease on the 5th *January* 1825: it is enacted, that from and after the said 5th *January* 1825, the several duties of excise and customs payable by law for or upon salt made at any salt-work, or rock-salt raised or taken out of any salt-mine or salt-pit in *England*; and all duties of excise or customs on the importation or exportation of any salt or rock-salt into or from any part *of the U. K. of G. B. and Ireland*; and all duties upon 5 G.4. c.65. Duties of excise and customs. From Jan. 5. 1825, duties on salt or rock-salt, &c. to cease.

5 G. 4. c. 65.

salted flesh brought from *Scotland* into *England*; and all duties upon mineral alkali, called soda, made in *G. B.*; and all duties upon licences for making oxymuriatic acid or oxymuriate of lime; and all drawbacks, bounties, and allowances, for or in respect of any exportation, or use, or employment thereof, except as hereinafter excepted or provided for, shall be no longer paid or payable; except as to any arrear of any such duties or drawbacks which shall be unpaid on the said 5th *January* 1825; and all provisions, regulations, and restrictions in any act or acts in force immediately before the passing of this act, relating to any such duties, or such licences, or such drawbacks, bounties, or allowances respectively, or to any salt or rock-salt, or such mineral alkali as aforesaid, or oxymuriatic acid or oxymuriate of lime; or to any person making, raising, importing, exporting, removing, receiving, selling, using, or applying any salt or rock-salt, or with relation to any salted flesh or fish or other provisions, or to such mineral alkali or oxymuriatic acid or oxymuriate of lime respectively as aforesaid, or any residuum thereof, or to any of them, from and after the said 5th *January* 1825, shall be repealed, and shall then cease; except as to any bond relating thereto, or any account to be rendered, or any act to be done under the said acts or any of them, and according to the provisions thereof, or any of them; and except as to the recovery of any penalty or forfeiture in respect thereof, incurred on or before the said 5th *January* 1825; and except as is hereinafter particularly excepted and provided for.

Not to affect any act for the encouragement of fisheries.

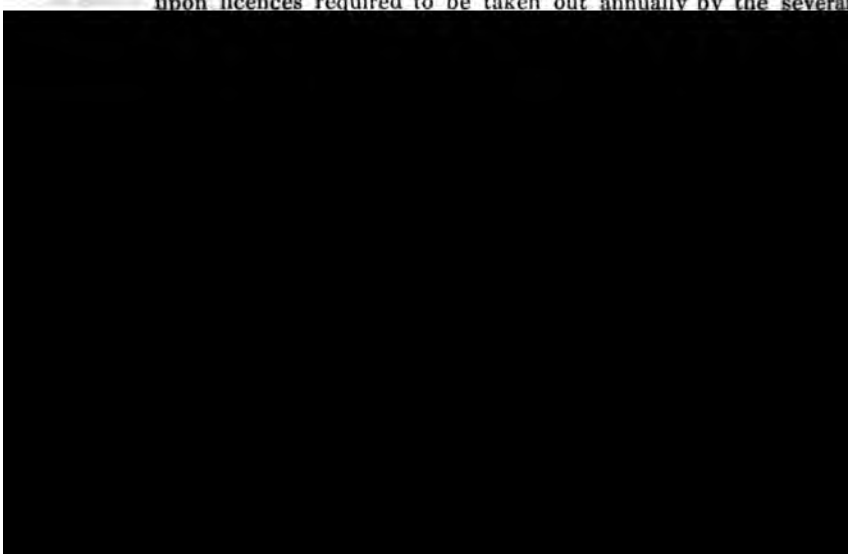
§ 2. Provided that nothing in this act contained shall repeal or alter any bounties or allowances granted or to be granted, allowed, and made payable under any act or acts for the encouragement and improvement of the *British* and *Irish* fisheries.

6 G. 4. c. 111. Customs.

By stat. 6 *G.* 4. *c.* 111. Salt may be imported and exported duty-free.

6 G. 4. c. 81. Licences.

§ 1. All duties before payable in respect of any excise-licence in the U. K. are repealed. And by § 2. new duties are imposed upon licences required to be taken out annually by the several



By stat. 6 *G.* 4. *c.* 81. All former duties payable upon excise-licences in the U. K. are repealed, and new duties imposed; *viz.* (*int. al.*) 6 G. 4. c. 81. Licences.

Upon every excise-licence to be taken out annually by every maker of soap for sale, a duty of 4*l.*

Note. — And note the several provisions of this statute as to the licences, penalties, &c. set forth at length, *ante*, tit. Ale and Beer, p. 120. *et seq.*

By stat. 6 *G.* 4. *c.* 111. Certain duties of customs are payable on hard and soft soap *imported* into the U. K., and a duty of 10*s.* *per cent.* on the real value thereof upon soap *exported*, being made in the U. K. 6 G. 4. c. 111. Duties. Customs.

By stat. 43 *G.* 3. *c.* 69. *sched.* (C), and 56 *G.* 3. *c.* 44. Certain duties are imposed upon soft soap and hard cake-soap, or ball-soap. Home-duty.

And certain allowances shall be made for soap used in the manufactures in *G. B.* viz.: — Allowance if used in manufactures.

By stat. 56 *G.* 3. *c.* 44. For every pound weight of hard cake-soap, or ball-soap, made in *G. B.*, which shall be consumed in *G. B.* in the making any cloths, serges, kerseys, bays, stockings, or other manufactures of sheep or lamb's wool only, or manufactures whereof the greatest part of the value of the materials shall be wool, or in the finishing the said manufactures, or preparing the wool for the same - - - -

£	s.	d.
0	0	2¼

By stat. 43 *G.* 3. *c.* 69. For every pound weight of soft soap made in *G. B.*, which shall be so consumed -

0	0	1

By stat. 56 *G.* 3. *c.* 44. For every pound weight of hard cake-soap, or ball-soap, made in *G. B.*, which shall be consumed in *G. B.*, in the whitening of new linen in the piece for sale - - - - - -

0	0	2

By stat. 43 *G.* 3. *c.* 69. For every pound weight of soft soap, which shall be so consumed - - -

0	0	0¾

By stats. 23 *G.* 3. *c.* 77. — 56 *G.* 3. *c.* 44. — 3 *G.* 4. *c.* 25. For every pound weight of hard soap made in *G. B.*, which shall be consumed in *G. B.* on or before the 5th *July* 1826, in preparing and furnishing any manufactures from flax or cotton for sale, except such as shall be used in whitening new linen in the piece, in order to the sale thereof - - - - - - 23 G. 3. c. 77. 56 G. 3. c. 44. 3 G. 4. c. 25.

0	0	1½

By stats. 23 *G.* 3. *c.* 77. — 43 *G.* 3. *c.* 69. — 3 *G.* 4. *c.* 25. For every pound weight of soft soap made in *G. B.*, which shall be so consumed. 23 G. 3. c. 77. 43 G. 3. c. 69. 3 G. 4. c. 25.

0	0	0¾

The allowances are paid to the manufacturers.

By stats. 10 *Ann.* *c.* 19. § 6. and 47 *G.* 3. *sess.* 2. *c.* 30. § 6. No maker of soap shall set up, alter, enlarge, or use any boiling-house, workhouse, warehouse, storehouse, shop, room, or other place for the making or keeping of soap, or for the boiling or keeping any oil, tallow, pot-ash, lime, or other materials proper to be made into soap; or use any copper, kettle, furnace, fat, cistern, trough, or other vessel for the boiling or making of soap, without first giving notice thereof in writing, at the next office for the said duties, on pain of 200*l.* See also stat. 58 *G.* 3. *c.* 65. § 7. 10 Ann. c. 19. 47 G. 3. sess. 2. c. 30. Place of making to be entered.

By stat. 10 *Ann.* *c.* 19. § 19. All soap, oil, tallow, and other materials for making soap which shall be found in any private boiling-house, workhouse, warehouse, or other place, and all private coppers, *kettles, furnaces, troughs*, and other vessels, for 10 Ann. c. 19.

10 Ann. c. 19. which no entry shall be made, or notice given, shall be forfeited, and the value thereof, and shall be seized by the officers for the duties on soap.

5 G.3. c.43. Summoning offenders. And by stat. 5 *G.* 3. *c.* 43. § 19. Whereas offenders frequently withdraw themselves to avoid the aforesaid penalty of clandestine making of soap; it is enacted, that a summons left at the place where discovery shall be made of such offence, directed to the person who shall be prosecuted for keeping or having made use of any place for the making or keeping of soap, or the boiling or keeping any oil, tallow, pot-ash, lime, or other materials proper to be made into soap; or for using or having used any copper or other vessel for the boiling or making of soap without notice given by his right or assumed name, shall be as effectual as if delivered personally, and directed to him by his proper name.

5 G.3. c.43. 12 G.3. c.46. Covers and locks to be provided. By stats. 5 *G.* 3. *c.* 43. § 15. and 12 *G.* 3. *c.* 46. § 7. Every person who shall make any *hard* soap [and by stat. 32 *G.* 3. *c.* 21. the same is extended to *every* maker of soap] shall at his own expense provide sufficient wooden covers (to be approved of in writing by the surveyor or supervisor) to every copper, pan, or other utensil wherein he shall boil or make soap; which vessels, &c. with the pipes that convey the waste or salt lees therefrom, shall be locked and sealed down by the officer as soon as the fire is withdrawn, whenever any soap or any thing of a soapy quality shall be left therein; which said locks and keys, and all other necessary fastenings for securing the said vessels and pipes, shall be provided by the surveyor or supervisor at the expense of the maker. And if any person shall make any soap before he shall have affixed such covers, or shall refuse to pay for the locks and keys and other fastenings, or shall wilfully break or damage any such lock or seal or other fastening, he shall forfeit 100*l.*

17 G.3. c.52. 24 G.3. sess.2. c.48. 32 G.3. c.21. By stats. 17 *G.* 3. *c.* 52. § 8.—24 *G.* 3. *sess.* 2. *c.* 48. § 9.—32 *G.* 3. *c.* 21. The cover and furnace-door and ash-hole door of every copper, pan, or other utensil used by any maker of soap, shall be securely locked and sealed down by the officer at all times except

[redacted]

writing to the commissioners, or whom they shall appoint, leaving a true copy, if demanded, with the maker; and if such officer shall refuse or neglect to leave such copy (after demand in writing), he shall forfeit 40*s.*; and if any maker shall obstruct such officer, he shall forfeit 50*l.* 10 Ann. c. 19.

By stat. 17 *G.* 3. *c.* 52. § 9. When any copper, pan, or other utensil used for the making of soap, or the furnace-doors thereof, shall be secured as in this act, and by stat. 5 *G.* 3. *c.* 43. is directed, the surveyor and supervisor, or other superior officer shall, between the hours of five in the morning and eleven in the evening, be permitted, on demand, to enter every workhouse of such maker, and after entry to unlock and examine every such copper, pan, or utensil, and the doors thereof, and after such examination shall again lock and secure the same: and if any person shall obstruct the officer herein, he shall forfeit 100*l.* 17 G. 3. c. 52. Hours of entry by officer into soapmaker's workhouse to examine coppers, &c.

§ 10, 11, 12. No maker shall have any private pipe or conveyance, by which any soap or materials making into soap may be conveyed from his copper, &c. into any place whatever, on pain of 200*l.* for every pipe or conveyance; and the officer, in the daytime, and in presence of a constable, on request made and cause declared, may break up the ground in any soaphouse, or the ground near adjoining, or any wall, partition, or other place, to search; and if he finds any such pipe or other conveyance, he may break up the house, wall, partition, or place through which the pipe shall lead, and break up or cut the same; and if any person shall obstruct the officer in such search, he shall forfeit 100*l.* Private pipe or conveyance.

§ 12. Provided, that if upon search no such pipe shall be found, the officer shall make good the ground, wall, or other place, or make satisfaction to the owner, to be adjudged by two of the next justices; or such owner may bring his action for the damages.

§ 14. The maker shall once in every lunar month perfectly cleanse every copper, pan, or other utensil by him used in the boiling or making of soap, and shall give three days' notice thereof to the officer; and when cleansed, the officer shall make search, and if he find any hole not before known, such hole shall be deemed wilfully made for the purpose of conveying away soap from the sight of the officer, before an account had been taken of the same; and the owner shall be liable to the penalties for concealing soap (that is, he shall forfeit 500*l.*, stat. 1 *G.* 1. *st.* 2. *c.* 36. § 14, 15.) unless he shall prove that it was made by bursting or other accident since the last survey, and that he had given notice thereof to the officer who first came on survey after such accident happened. And if such maker shall neglect perfectly to cleanse his copper, pan, or other utensil so used, or to give such notice, or shall obstruct the officer in searching and examining, he shall forfeit 50*l.* Coppers, &c. to be cleaned.

By stat. 59 *G.* 3. *c.* 90. § 1. Every maker of white, yellow, brown, or soft soap, shall, before he shall begin to cleanse or take any such soap out of any copper, pan, or vessel by him used for the boiling or making of such soap, give to the officer of the division or place where such soap is intended to be cleansed, notice in writing of the particular time and hour when he intends to cleanse or take such soap from or out of such copper, pan, or vessel, as hereinafter mentioned; *viz.* if such soap is intended to be cleansed at any place within the *limits of the chief office of* excise in *London*, then 59 G. 3. c. 90. Notice to be given to the officer of the time intended to cleanse or take soap out of the copper, &c.

59 G.3. c.90. such notice shall be so given six hours next before the time of beginning to cleanse or take such soap out of such copper, pan, or vessel; and if such soap is intended to be cleansed at any place out of the limits aforesaid, then such notice shall be so given 12 hours next before the time of beginning to cleanse or take such soap out of such copper, pan, or vessel; and if any such maker of soap shall begin to cleanse any white, yellow, brown, or soft soap, without giving such notice, he shall forfeit 100*l.*; and if any maker shall not begin to cleanse and take such soap out of the copper, pan, or vessel within the space of three hours after the particular hour mentioned in the notice, then such notice shall be void; and every maker of soap who, after the expiration of the said space of three hours, shall begin to cleanse or take any soap out of any copper, pan, or vessel, without having first given a new notice, shall forfeit 100*l.*

Penalty, 100*l.*

Penalty, 100*l.*

24 G.3. sess. 2. c.48. To have one movable pump only.

By stat. 24 *G.*3. *sess.*2. *c.*48. § 8. No maker shall have any pipe or other conveyance from or to any copper or pan made use of for the boiling of soap, except one movable pump for taking out salt or spent lees, which pump shall be taken out of such copper or pan before locked down by the officer; and no maker shall have any cock or hole in the side, or curb, or bottom, or cover of such boiler or copper (except small holes not exceeding one eighth of an inch in diameter on the cover to let the steam through), nor shall have any part of the curb movable, nor shall use any syphon, crane, or trinket, but shall take out all lees, soap, or other ingredients by a pump or ladle, on pain of forfeiting 500*l.*

11 G.1. c.30. Soapmakers to give notice of making soap.

By stat. 11 *G.* 1. *c.* 30. § 33. 35. Every maker of soap shall give to the officer notice in writing of the time and hour each making of soap is intended to be begun, if within the limits of the bills of mortality, 12 hours, and if in any other place, 24 hours, before the beginning of such making, on pain of forfeiting 50*l.*; and if such making shall not be begun in six hours within the bills of mortality, and in 12 hours in any other place, after the time mentioned in the notice, it shall be void; and every maker who shall begin after the expiration of such times, without having given a new notice, shall incur the like penalty as if he had not given notice.

What deemed a beginning to work.

§ 34. The putting lees (*a*), or lye into the copper, or other utensil commonly used for making of soap, shall be deemed a beginning to work.

24 G.3. sess.2. c.48. Notice to officer before charging copper.

By stat. 24 *G.*3. *sess.* 2. *c.*48. § 12. Every maker of soap shall give to the officer notice in writing of the particular time and hour when he intends to charge his copper or boiler with any materials

59 G.3. c.90. Lees shall not be manufactured, nor barilla, exceeding 28lbs. ground for sale. Penalty, &c.

(*a*) By stat. 59 *G.*3. *c.*90. § 4. No person shall manufacture for sale, or sell any lees, ley, or lye, fit for the making of soap, or shall grind or pound for sale any barilla, or sell any ground or pounded barilla exceeding 28lbs. weight at any one time; and if any person shall manufacture for sale, or sell any lees, ley, or lye fit for the making of soap, or shall grind or pound for sale any barilla, or sell any ground or pounded barilla exceeding 28lbs. weight at any one time, he shall forfeit 100*l.*, and all such lees, ley and lye, and ground or pounded barilla, shall be forfeited, together with all vessels or packages containing the same, and may be seized by any officer of excise.

Barilla not allowed unless in a soapmaker's premises.

§ 7. All barilla, kelp, black ashes, lees, ley or lye, found in the possession of any person not being an entered soapmaker, shall be forfeited, and may be seized by any officer of excise.

for making soap, if within the limits of the head office of excise in *London*, 12 hours, and if at any other place, 24 hours, before the time of charging, on pain of forfeiting 100*l.*; and if he shall not begin to charge within three hours after the time mentioned in the notice, it shall be void; and every maker who, after the expiration of the said time, shall begin to charge without having given a new notice, shall forfeit 100*l.* 24 G.3. sess.2. c.48.

By stat. 5 *G.* 3. *c.* 43. § 15. If by any contrivance any maker of soap shall open any copper, pan, utensil, or pipe, before the same shall have been opened by the officer, he shall forfeit 20*l.* 5 G.3. c.43.

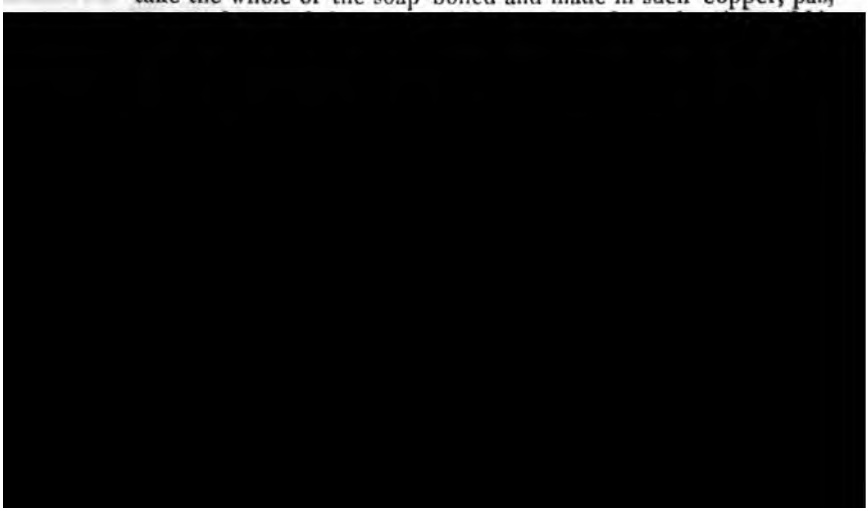
§ 16. No maker of *hard* soap shall light a fire under any copper, pan, or other utensil used in boiling of soap, or for cleansing his foul goods, or in preparing any materials for the making of soap, without first giving notice, if within the limits of the head office 12 hours, if elsewhere 24 hours, of his intention, on pain of 20*l.*

§ 17. Every maker of *hard* soap shall make use of regular square or oblong frames only, for the cleansing his soap (whether perfect or not) into, when taken out of the vessel where it was boiled; and the bottom, sides, and ends of every such frame shall be two inches thick at the least; and such frame shall not exceed 45 inches in length, nor 15 inches in breadth; and if any maker of hard soap shall make use of any other than such frames, he shall forfeit 20*l.* Frame to be made use of in working.

By stat. 47 *G.* 3. *sess.* 2. *c.* 30. § 9. No maker of hard soap shall, for cleansing his soap (whether perfect or not perfect) into, when taken out of the utensil where the same was boiled, make use of any frame, the sides and ends of each and every of the lifts whereof shall not be permanently mortised and nailed, or permanently dovetailed and nailed together, nor make use of any frame of a less depth or height than that of 45 inches, nor shall cleanse or put his soap, when taken out of the utensil where the same shall have been boiled, into any frame in any less quantity than to the depth in such frame of 45 inches at the least; and if any maker shall, for the purpose aforesaid, make use of any other kind of frame, or shall cleanse otherwise than as above in this section mentioned, he shall for every such offence forfeit 50*l.*: Provided, that every such maker shall be at liberty to cleanse and put into one such soap-frame as is herein-before directed to be used, the residue of any making of soap which shall remain after filling his other soap frame or frames to the depth of 45 inches at the least, though such residue of soap should be of any less quantity than sufficient to fill such one soap-frame to the depth of 45 inches. 47 G.3. sess.2. c.30. Hard soap-makers not to use any soap-frame whose sides and ends shall not be permanently fastened together, and which shall be less than 45 inches in depth, under the penalty of 50*l.*

And by § 10. No maker shall cleanse or take, or begin to cleanse or take, his soap from or out of any copper, &c. by him used for the boiling or making of soap, at any other time than between the hours of seven in the morning and six in the afternoon. The remaining part of this section is repealed by stat. 59 *G.* 3. *c.* 90. § 2.; and it is thereby enacted, that every maker of soap, who shall begin to cleanse or take any soap out of any copper, boiler, or vessel by him used for the boiling or making of soap, shall cleanse and take the whole of the soap boiled or made in any such vessel, &c. out of the same within the times hereafter mentioned; (*viz.*) if any maker of hard soap shall begin to cleanse or take any hard soap out *of any vessel, &c. and shall* cleanse or put the same Makers of soap cleansing any copper except between certain hours. 59 G.3. c.90. Periods wherein the soap shall be cleansed and taken out of the boilers in manner herein mentioned.

9 G.3. c.90. into six frames, or more than six frames, and shall not cleanse and take the whole of the soap boiled and made in such vessel, &c. out of the same within the space of three hours from the time of his having first begun to cleanse or take such soap out of such vessel, &c.; and if any maker of hard soap shall begin to cleanse or take any hard soap out of any vessel, &c. and shall cleanse or put the same into three frames, or less than six frames, and shall not cleanse and take the whole of the soap boiled and made in such vessel, &c. out of the same, within the space of two hours from the time of his having first begun to cleanse or take such soap out of such vessel, &c.; and if any maker of hard soap shall begin to cleanse or take any hard soap from or out of any vessel, &c. and shall cleanse or put the same into two frames, or less than two frames, and shall not cleanse and take the whole of the soap boiled and made in such vessel, &c. out of the same within the space of one hour from the time of his having first begun to cleanse or take such soap from or out of such vessel, &c.; and if any maker of soft soap shall begin to cleanse or take any soft soap out of any vessel, &c. which shall contain 20 barrels or 5,120lbs. of soft soap, or more, and shall not cleanse and take the whole of the soap boiled and made in such vessel, &c. out of the same within the space of three hours from the time of his having first begun to cleanse or take such soft soap out of such vessel, &c.; and that if any maker of soft soap shall begin to cleanse or take any soft soap out of any vessel, &c. which shall contain 10 barrels, or 2,560lbs., and less than 5,120lbs. of soft soap, and shall not cleanse and take the whole of the soap boiled and made in such vessel, &c. out of the same within the space of two hours from the time of his having first begun to cleanse or take such soft soap out of such vessel, &c.; and that if any maker of soft soap shall begin to cleanse or take any soft soap out of any vessel, &c. which shall contain any such soft soap, and less than 10 barrels, or 2,560lbs. of soft soap, and shall not cleanse and take the whole of the soap boiled and made in such copper, pan,



the proper officer of excise, every maker so offending shall forfeit 200*l.* 59 G.3. c.90.

By stat. 24 *G.* 3. *sess.* 2. *c.* 48. § 11. It shall be lawful for any officer of excise, as often as he shall think fit, by gauging, weighing, or otherwise, to take an account of all tallow, oil, rosin, and grease of every kind, and of all materials for making soap, which any maker shall have in his possession; and such maker shall provide proper scales and weights, and assist in weighing and taking such account, on pain of 20*l.* And in case the officer shall find any decrease in any materials for making soap, and shall not receive a satisfactory account thereof, he shall charge the maker with the duties of such decrease, according to the rates following; (that is to say,) for every 14 cwt., or 210 gallons of oil missing, 20 cwt. of hard soap. 24 G.3. sess.2. c.48. Officer to charge for materials missing.

For every 13 cwt. of rendered tallow missing, 20 cwt. of hard soap.

For every 13½ cwt. of kitchen-stuff and tallow missing, 20 cwt. of hard soap.

For every 14 cwt. of tallow, rosin, and oil missing, 20 cwt. of yellow, brown, or rosin soap.

§ 13. Every soapmaker shall, before he begins to charge his boiler or copper, weigh in the presence of the officer all the materials with which he intends to charge the boiler or copper, and all such materials shall be put into the copper or boiler in the presence of the officer; and in case the quantity of hard soap afterwards produced therefrom shall be found by the gauge in the frames to be less than ought to have been produced according to the rates aforesaid, such deficiency shall be charged with the duties thereupon, according to the rates before mentioned: Provided, that if such boiler or copper shall have been charged with rough fat, or rough kitchen grease, then 8lb. of rough fat shall be deemed equal to 7lb. of tallow, and 5lb. of rough kitchen grease to 4lb. of clean kitchen grease.

And by stat. 27 *G.* 3. *c.* 31. § 19. Every soap-maker shall, when required by any officer, before he charge his copper or boiler with any materials for making soap, weigh such materials (except lye) in the presence of the officer, and put the same into such copper or boiler, on pain of forfeiting 50*l.* 27 G.3. c.31. Materials to be weighed.

By stat. 10 *Ann.* *c.* 19. § 16. No maker shall (on pain of 20*l.*) remove any soap of which no account hath been taken by the officer from where it was made, without giving the officer within the bills 24 hours' notice, and in other parts two days' notice, of his intention to remove the same. 10 Ann. c.19. Removing soap without notice.

§ 17. All makers shall keep the soap which shall not have been taken an account of by the officer, separate from that which hath been taken an account of, for 24 hours after making, within the bills, or two days in any other place; unless it shall have been sooner taken an account of, on pain of forfeiting 5*l.* Soap unsurveyed to be kept separate.

By stat. 1 *G.* 1. *st.* 2. *c.* 36. § 14, 15. If any maker shall conceal any soap or materials, he shall forfeit the same, and also 500*l.* Concealing.

And by stat. 5 *G.* 3. *c.* 43. § 20. If the officer shall have cause to suspect that soap is privately making in any place, or that any soap is concealed with intent to avoid the duty; in such case, on oath made by such officer before a commissioner or one justice residing near to the place, setting forth the ground of his suspicion, such 5 G.3. c.43. Privately making soap.

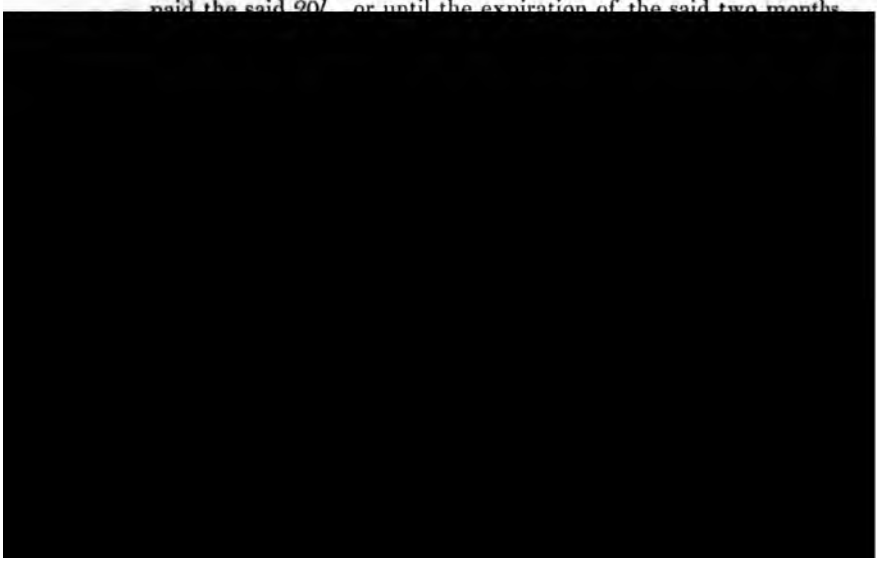
5 G.3. c.43. commissioner or justice may, if he shall judge it reasonable, by special warrant authorise such officer, by day or night, (but if in the night, in the presence of a constable,) to enter into every such place suspected, and to seize and carry away as forfeited all such soap as he shall there find so privately making, together with all materials then ready or preparing for making soap, and likewise all such soap as they shall find so concealed, together with the boxes or other package; and the person that shall be found privately making soap, or in whose possession such soap shall be found, shall forfeit 100*l.*

47 G.3. sess.2. c.30. Penalty on persons assisting in making soap privately.

By stat. 47 *G.* 3. *sess.* 2. *c.* 30. § 7. When any officer of excise shall discover that the making of soap is carried on in any boiling-house, workhouse, storehouse, warehouse, shop, room, or other place, whereof no notice in writing shall have been given at the office for the duties on soap next to the place where such soap shall be made, and shall at the same time discover in such boiling-house, &c. any person knowingly concerned in carrying on the making of such soap, the person so discovered shall forfeit 20*l.* over and above all penalties and forfeitures that the proprietor or maker of such soap, or the owner, renter, occupier, or possessor of such boiling-house, &c. shall be liable to; and the officer and all other persons acting in his aid may stop and detain every person so discovered, and convey him before one justice of the peace for the county, &c. wherein so discovered; and such justice shall, on confession, or on proof by the oath of one witness, convict the person so discovered, and he shall immediately, on such conviction, pay the said sum of 20*l.* into the hands of the officer who shall have conveyed such offender before such justice, to be applied as hereinafter directed; and on such offender refusing to pay the same, the justice so convicting shall, by warrant, commit him to the house of correction for the said county, &c. there to be kept to hard labour for two months, to be reckoned from the day of such commitment, and not to be discharged until he shall have paid the said 20*l.* or until the expiration of the said two months.

First offence 20*l.*

Officers may arrest them and carry them before a justice, who may convict and commit.



ap shall have been so cleansed into such frame, cut or ich soap into cakes or bars, and remove every part thereof uch frame; and when any maker of hard soap shall have l his soap into any frame wherein such soap shall be of th of upwards of fifty inches, he shall, within 168 hours ch soap shall have been so cleansed into such frame, cut p into cakes or bars, and remove every part thereof out frame, on pain of forfeiting for every such offence re- ly *50l.* 47 G.3. sess.2. c.30. within a certain time, to forfeit 50l.

at. 10 *Ann. c.* 19. § 8. Every barrel of soap shall contain half-barrel, 128lbs.; firkin, 64lbs.; half-firkin, 32lbs., avoir- besides the weight or tare of the cask. And all soap, hard cake-soap, and ball-soap, 10 *Ann. c.* 26. § 111.) shall, aking thereof, be put by the maker into such cask, and ier. 10 Ann. c.19. Measure of soap.

by stat. 12 *Ann. st.* 2. *c.* 9. § 19. All soft soap that shall be any other cask less than barrels, half-barrels, firkins, and ins, shall be forfeited, and also *5l.* 12 Ann. st.2. c.9.

at. 24 *G.* 3. *sess.* 2. *c.* 48. § 14. No maker shall sell any hard t in the form of cakes or bars, or what is called *ball-soap;* ll return all scraps and parings into the boiler in the e of the officer immediately after the soap that has been the frames shall have been cut up for sale, on the penalty 24 G.3. sess.2. c.48. Hard soap to be sold in cakes, and the scraps returned.

at. 28 *G.* 3. *c.* 37. § 14. If any scraps or parings of hard soap sold or sent out by any maker, or shall be found remov- emoved by land or water, the same shall be forfeited, to- vith the casks and packages, and shall be seized by any of excise; and the maker who shall send out or sell the all for every such offence forfeit 100*l.* 28 G.3. c.37.

at. 17 *G.* 3. *c.* 52. § 3. The maker shall weekly make entry ig at the next office of all the soap by him made within ek, setting forth the weight, and what quantity was made boiling in that week, on pain of *50l.* for every neglect; ntries shall be on oath (or if a quaker, affirmation) of the r chief workman, according to the best of his knowledge ef. The said entry and oath, within the bills, to be at the fice of excise; and elsewhere, with the collector and or. 17 G.3. c.52. Entry and payment of the duties.

And within one week after entry, the maker shall pay and f the duties, on pain of double duty; and after such de- payment, he shall not sell or deliver out any soap, until he id off his duty, on pain of double value.

No maker shall be obliged to go or send further than the town where the soap is made, or the next market-town, to ich entry or payment.

at. 26 *G.* 3. *c.* 77. § 10, 11. Any person who shall knowingly buy, or have in his possession any soap after the same ve been removed from the place where it was made, and o have been charged with the duty, before the said duty en charged (except such as hath been condemned as for- whether he claim any property or interest therein or not, rfeit the same, and treble the value thereof, to be esti- t the highest *London price.* Persons having soap in their possession which hath not been charged with the duty.

23 G.2. c.21. Soap carried coastwise.

By stat. 23 *G.*2. *c.* 21. § 29. cocquets granted for ship to be landed in any other part of the kingdom, shall e quality, quantity, and weight, the mark of the packag whom made and sold, and where consigned; and if shi out such cocquet, the same shall be forfeited and seizec with the package.

Importation and exportation.

§ 27. No soap shall be imported otherwise than in s age, containing at least 224 pounds of neat soap, and sto in the hold; on pain of being seized and forfeited, tog the package, and the master or person taking charge of to forfeit 50*l.*

26 G.2. c.32.

But by stat. 26 *G.* 2. *c.* 32. § 8. On information broug any such master, he may detain the wages of the mari be determined; and if it shall appear that the soa on board by any mariner without the master's know master may apply the wages of such mariner in paym forfeiture.

23 G.2. c.21.

By stat. 23 *G.* 2. *c.* 21. § 28. The officers of excis manner as the officers of the customs) may go on vessel, and search for and seize all soap forfeited, tog the package; and they may likewise seize such as, be and payment of duties, shall be found unshipping or un

§ 30, 31. The officers of excise or customs may seiz with the package that shall be found in any vessel, carrying in any cart or other carriage, where they shall reason to believe that the same was made in some pri house or other place, or clandestinely imported witho of duty, or that the same has been exported and re-l re-payment of the duty; and if the party in whose pos same shall be found shall not at the hearing of the i make it appear that the duty hath been paid or secur forfeit 5*l.* for every 100 pounds weight, and so in pro any greater or lesser weight; and also the goods and pa be forfeited.



And by stat. 10 *G.* 3. *c.* 44. If he shall use insufficient scales or weights, he shall forfeit 100*l.*; but not to be prosecuted both on this and the former act. And by stat. 28 *G.* 3. *c.* 33. § 15. the same shall be forfeited, and may be seized by any officer. 10 G.3. c.44.

By stats. 10 *Ann.* *c.* 19. § 26.—11 *G.* 1. *c.* 30. § 39.—24 *G.* 2. *c.* 40. § 29.—43 *G.* 3. *c.* 69. § 4.—59 *G.* 3. *c.* 90. § 12, 13. The excise laws shall be in force for managing these duties; and the penalties, except where it is otherwise directed, shall be recovered and mitigated as by the laws of excise, or in the courts at *Westminster*; and distributed half to the king, and half to him that shall sue. Power of the justices.

By stat. 23 *G.* 2. *c.* 21. § 35. Where any soap shall be seized for non-payment of duties, or non-entry, and it shall be disputed whether such payment or entry were made or not, the proof shall lie on claimer, and not on the officer. Proof to lie on the claimer.

§ 37. If the party is not satisfied with any judgment of the justices on the act of 23 *G.* 2. *c.* 21. above mentioned, he may appeal to the next quarter-sessions (except in the case before mentioned, where no person shall claim the goods seized). Appeal.

§ 38. On information on stat. 23 *G.* 2. *c.* 21. the mitigation shall not reduce the penalty to less than a fourth part, over and above the costs to be allowed. Mitigation.

And by stats. 10 *Ann.* *c.* 19. § 20.—28 *G.* 3. *c.* 37. § 21. All soap, materials, and utensils in the custody of the maker, or of any in trust for him, shall be liable to the duties and penalties, as if the debtor or offender were the lawful owner. Utensils liable.

And whereas doubts have arisen whether the provisions of the aforesaid act 5 *G.* 3. *c.* 43. extend to the makers of *ball-soap*, it is declared by stat. 28 *G.* 3. *c.* 37. § 13. that the provisions of the said act do extend to the makers of ball-soap. 5 G.3. c.43. extended to makers of ball soap.

By stat. 59 *G.* 3. *c.* 90. § 6. When any soap exceeding the quantity of 28 lbs. shall be removed or carried by land or by water, the word "soap" shall be painted or marked in large and legible letters, of at least two inches in length, on every chest, basket, box, cask, and package wherein such soap shall be contained; and further, when any soap exceeding the quantity of 28 lbs. shall be removed or carried in any cart, waggon, or other carriage, by any person not being a known and public or common carrier of goods and merchandise from one part of *G. B.* to another, the word "soap" shall be painted or marked in large and legible letters of at least three inches in length, on some conspicuous and uncovered part of every such cart, waggon, or other carriage; and all soap exceeding the quantity of 28 lbs. which shall be removed or carried, or removing or carrying, in any chest, basket, box, cask, or package, not having the word "soap" painted or marked thereon in large and legible letters of at least two inches in length, or which shall be removed or carried, or removing or carrying by any person not being a known and public or common carrier of goods and merchandise from one part of *G. B.* to another, in any cart, waggon, or other carriage, not having the word "soap" painted or marked in large and legible letters of at least three inches in length, on some conspicuous and uncovered part of such cart, waggon, or other carriage, shall be forfeited, together with the chest, basket, box, cask, or other package containing the same, and *the boat or vessel*, horse or horses, or other 59 G.3. c.90. In the removal of soap, exceeding 28lbs. the word "soap" shall be put on the package, on penalty of 100*l.* and forfeiture of vessel, carriage, &c.

59 G.S. c.90.

cattle, waggon, cart, or other carriage made use of in the
or carriage of the same, and shall and may be seized by an
or officers of excise; and the person or persons in whose
or possession such soap shall be found, or who shall be
have been employed or concerned in the removal or
thereof, shall forfeit 100*l.*

Soapmakers to receive books containing certificates to be filled up and sent out with every quantity of soap sold exceeding 28lbs.

§ 8. Every maker of soap shall, upon demand, receive f
proper officer of excise a book prepared with printed fo
titles for the purposes hereafter mentioned, to be kept b
such maker of soap in some public and open part of his
premises; and no soap exceeding 28 lbs. shall be sold or d
by any such maker of soap to any person without being
panied by a certificate filled up and cut out progressive
the printed forms contained in such book signed by the
soap selling or delivering the same, or some person on hi
certifying the date, the quantity, quality, sort, or kind of su
to whom sold, from whose stock delivered, and that the
been paid or secured to be paid; and the maker sellin
livering any soap exceeding 28 lbs., shall at the same ti
a correspondent entry thereof, containing the same pa
in such book; and such book, with such entries, shall at
from six o'clock in the morning until seven o'clock in the
lie open in the entered premises of such maker of soa
perusal of any officer of excise, and shall be delivered

Penalty, 200*l.* and forfeiture of soap.

maker of soap to any officer of excise, upon demand; ar
maker of soap shall sell or deliver any quantity of soap e
28 lbs. at any one time, unaccompanied by such certifi
without making such entry, or shall convey away or con
such book, or cancel, obliterate, destroy, or tear out
therefrom, or entry therein, or shall make any false entry
or shall oppose or obstruct any officer of excise in inspec
such book or entry therein, or shall at any time negle
required, to deliver up to any officer such book, he sh
200*l.*; and all soap exceeding 28 lbs. removing or remove



therein the entries in the books of such officers of the state of the manufactory, and the accounts and particulars of survey taken by them from time to time at such traders or manufacturers: And whereas such practice has been found beneficial to the revenue, and it is expedient to prevent the removal, obliteration, or destruction of such excise specimens; it is therefore enacted, that it shall be lawful for any officer of excise to leave and deposit in any house, workhouse, room, or place entered or made use of by any trader or manufacturer, subject to the survey of any officer of excise, a certain book or paper commonly called *a specimen*, and at all times to have free access to such book or paper; and if any person, not being an excise officer, shall remove, convey away, or conceal any book or paper, commonly called *a specimen*, or shall injure, damage, or destroy the same, or deface or obliterate any entry or entries therein, or shall obstruct or hinder any officer of excise from having free access to or from inspecting any such book or paper, or in making any entry therein, or in taking away any such book or paper, as to such officer shall seem meet, the person so offending shall forfeit 200*l*.

59 G.3. c.90.

to be left on the premises of traders or manufacturers.

Penalty on removing them; or defacing entries, 200*l*.

§ III. (16.) Spirituous Liquors.

In order more clearly to explain the matters under this head, it is proposed to arrange the same in the following manner: —

(*a*) Concerning Foreign Spirits imported.

[1 Ann. st. 2. c. 14. — 6 G. 1. c. 21. — 8 G. 1. c. 18. — 11 G. 1. c. 36. — 32 G. 2. c. 29. — 5 G. 3. c. 43. — 17 G. 3. c. 52. — 23 G. 3. c. 70. — 26 G. 3. c. 70. — c. 77. — 43 G. 3. c. 69. — 1 & 2 G. 4. c. 94. — 5 G. 4. c. 34. — 6 G. 4. c. 80. — c. 108. — c. 111. — 9 G. 4. c. 44.]

(*b*) Concerning Spirits made in England, and therein of Distillers, Compounders, and Rectifiers.

[6 G. 4. c. 80. — 9 G. 4. c. 44.]

(*c*) Concerning Spirits made in England for Exportation, or to be shipped as Stores, or for Removal to Scotland or Ireland, or made in Scotland or Ireland for Removal to England.

[2 G. 3. c. 5. — 28 G. 3. c. 37. — 42 G. 3. c. 93. — 57 G. 3. c. 123. — 1 & 2 G. 4. c. 94. — 6 G. 4. c. 58. — c. 80. — 7 & 8 G. 4. c. 52. — 9 G. 4. c. 44.]

(*d*) Matters relating to Importers and Dealers in Spirits by Wholesale and Retail; and the Recovering and Application of Penalties.

[24 G. 2. c. 40. — 6 G. 4. c. 80. — 9 G. 4. c. 44.]

(*a*) Concerning Foreign Spirits imported.

By stat. 6 *G.* 4. *c.* 111. Several duties of customs are imposed upon spirits *imported.*

6 G. 4. c. 111. Duty on importation.

Smuggling.

And see the several provisions of the smuggling act 6 *G.* 4. *c.* 108. relative to the importing or attempting to import foreign spirits without payment of the duties, *ante*, p. 18. *et seq.*

5 G.4. c.34.

The excise duties granted by 43 *G.* 3. *c.* 69. on the importation of rum, the produce of the *British* colonies in *America*, were reduced by stat. 5 *G.* 4. *c.* 34. § 1.

32 G.2. c.29. Officers may take samples.

By stat. 32 *G.* 2. *c.* 29. § 1. It shall be lawful for the gaugers or other officers of excise, at any time before the gauging, to take a sample, not exceeding half a pint in the whole, out of each cask or other package containing foreign spirituous liquors imported, without paying any thing for the same; and it shall be lawful for the importer or proprietor, in the presence of the officers of excise, and whilst the spirits are on shipboard, to take the like samples without paying any duty for the same.

26 G.3. c.73.

And by stat. 26 *G.* 3. *c.* 73. § 36. Any officer may take samples of foreign spirits, in the custody of any distiller, rectifier, compounder, or dealer, not exceeding four gallons, paying for the same at the rate of 13*s.* *per* gallon; and if any person shall obstruct such officer, he shall forfeit 100*l.*

1 Ann. sess.2. c.14. Landing French brandy without paying the duty.

By stat. 1 *Ann. sess.* 2. *c.* 14. § 2. If any person shall land or deliver out of any vessel or boat any *French* brandy before the duty be paid or secured, or without licence from the proper officer so to do, he and every person aiding therein, or concealing the same when landed, shall not only forfeit the same, but also double value; and if any officer of the customs or excise shall connive thereat, or shall be concerned therein, or conceal the same, or not give notice thereof, he shall be incapable to hold any office in the revenue, and forfeit 500*l.*

11 G.1. c.30. Excise officers may go on board.

By stat. 11 *G.* 1. *c.* 30. § 1. The officers of excise may go on board and enter any ship or vessel, and search in like manner as the officers of the customs now do, for any exciseable liquors, and seize all such as shall be forfeited, and such as shall be unshipped before entry and payment of the duties, together with the casks and

m after seizure, or shall after seizure stave or otherwise damage r cask or vessel, he shall forfeit 40*l.* 8 G.1. c.18.

By stat. 5 *G.* 3. *c.* 43. § 27. If any foreign brandy, arrack, rum, ng waters, or spirits of any kind shall be imported in any ship, sel, or boat of 100 tons burden or under, (except only for the of the seamen, not exceeding two gallons each,) such vessel, h her tackle, &c., and also the brandy, &c., shall be forfeited. 5 G.3. c.43. In what ships to be imported.

cept rum or other spirits of the growth and manufacture of the itish sugar plantations, which may be imported in vessels not ng less burden than 70 tons. 6 G.3. c.46.

By stat. 6 *G.* 1. *c.* 21. § 32. If the master, purser, or other person ing charge of the vessel, shall suffer any brandy (or other un- tomed goods) to be put out of the ship into any hoy, lighter, t, or bottom, to be laid on land, he shall, besides the other pe- ies, suffer six months' imprisonment. 6 G.1. c.21. Unshipping into boats in order to be landed.

By stat. 4 *W.* 3. *c.* 5. § 8. No brandy shall be imported in any el not containing 60 gallons at the least, on pain of forfeiting same or the value. 4 W.3. c.5. In what casks to be imported.

By stat. 1 & 2 *G.* 4. *c.* 94. It is enacted, that it shall not be law- to export or to enter for exportation from any part of *G. B.* he islands of *Jersey*, *Guernsey*, *Alderney*, or *Sark*, or to any or er of them, under the penalty of the forfeiture thereof, to be ed by any officer of the customs or excise, any rum of the luction and manufacture of the *British* colonies or plantations, ss permission be first given for that purpose by the commis- ers of H. M.'s customs in *England*, or any four or more of n, by licence under their hands; and the said commissioners, ny four or more of them, are hereby authorised and required, pplication to them in writing for that purpose, to grant their nce from time to time under their hands (such licence to conti- in force 30 days from the date thereof and no longer,) to any H. M.'s subjects, to export from any port in *England*, in *Bri*-built ships, owned, registered, and navigated according to , and not of less burden than 70 tons (according to the rules admeasurement prescribed by law), to the said islands of ey, *Guernsey*, *Alderney*, and *Sark*, any rum of the produc- or manufacture of the *British* colonies or plantations, in h quantities as shall be approved of and directed from time time by the commissioners of H. M.'s treasury, or any three hem. 1&2G.4. c.94. No rum of the British colonies shall be import- ed from G. B. to Jersey, &c. on pain of for- feiture, unless permission be given by the commissioners of customs, who may grant licence to export rum under the conditions here- in mentioned.

By stat. 26 *G.* 3. *c.* 73. § 59. No foreign spirituous liquors (ex- t rum of the growth or produce of the *British* plantations, and ck,) shall be imported in any vessel or cask which shall con- less than 100 gallons (excepting for the use of the seamen, not eeding two gallons for each man), upon pain of forfeiting the e, and also the ship or vessel in which imported, of whatever len, with all her guns, furniture, ammunition, tackle, and arel. 26 G.3. c.73. In what casks to be imported.

60. No person shall import any foreign brandy, arrack, rum, its, or strong waters, of a greater degree of strength than that ne to nine over hydrometer proof; and if any foreign brandy shall be imported of any greater degree of strength, the same ll be forfeited, with the casks and packages, and may be seized ny officer of customs or excise; but nothing herein shall ex- d *to the forfeiture of any rum or spirits of* the growth, produce, Of what strength.

16 G.3. c.73. and manufacture of the *British* sugar plantations, for being imported of any greater degree.

23 G.3. c.70. Places of keeping to be entered.

By stat. 23 *G.* 3. *c.* 70. § 1. No seller of or dealer in foreign spirituous liquors, residing within the limits of the head office of excise in *London* (not being a retailer duly licensed), shall be permitted to make entry of any warehouse, storehouse, room, shop, cellar, vault, or other place for keeping any foreign brandy, arrack, rum, spirits, or strong water; unless he shall inhabit in a tenement of 12*l.* a year or upwards, and for which he shall be assessed in his own name, and also pay to the parish rates; and in no other part of the kingdom, unless he be assessed and pay to church and poor; otherwise he shall be liable to forfeit as dealing therein without entry.

§ 2. And where any entry shall be made of any warehouse, &c. no other seller or dealer (not being a joint trader or partner with such seller or dealer), however qualified, shall make entry of the same, or of any other warehouse, &c. within the same house; on pain of being subject to the like penalties as dealers without entry. See also stat. 58 *G.* 3. *c.* 65. § 7.

26 G.3. c.77. Officers may enter and survey and take samples.

By stat. 26 *G.* 3. *c.* 77. § 15. It shall be lawful for any excise officer by day or by night, with a constable, upon one hour's previous notice having been given to any importer or proprietor of rum or spirits of the growth or manufacture of the *British* sugar plantations, or left at his dwelling-house, or with his agent or servant, to enter his warehouses, and by tasting, gauging, or otherwise, to take an account of all rum or other liquors found therein, and take samples thereof not exceeding half a pint out of each cask, paying (if demanded) after the rate of 3*s.* a gallon. And if any such proprietor, his agent or servant, shall refuse to permit such officer to enter any such warehouse to take such account or samples, he shall forfeit 200*l.*

§ 16. Upon oath made by any person that he hath reason to suspect or believe, that such proprietor or importer of rum or other spirits lodged as aforesaid, doth intend, without the know-



to foreign spirits, inserted under the other divisions of this section, *post.*

By stat. 9 *G.* 4. *c.* 44. § 2. All acts relating to the revenue of excise in force at and immediately before 1825, with respect to dealers in and sellers of foreign and colonial spirits, &c. are continued in force (except as altered subsequently, &c.). 9 G. 4. c. 44.

§ 4. All acts in force in *England* relating to foreign and colonial spirits, &c. are extended to the U. K.

(*b*) Concerning Spirits made in England, and therein of *Distillers, Compounders,* and *Rectifiers.*

By stat. 6 *G.* 4. *c.* 80. § 1. From and after the 5th day of *January*, 1826, so much and such parts of the several acts in force at and immediately before the commencement of this act, as grant any duty on wort or wash brewed or made for extracting spirits in *England*, or upon spirits extracted in *England* for home consumption, or extracted in *Scotland* or *Ireland* respectively, and imported into *England*, or duty on any licence for distilling, rectifying, or compounding *British* spirits, or for the sale of spirits, or as regulate or relate to the distillation of such spirits by persons licensed to make or distil such spirits in *England*, or the mode of charging the duty thereon, or on wort or wash brewed or made to extract such spirits, or as regulate or relate to the rectification or compounding of such spirits in *England* by persons duly licensed for that purpose, or the strength at which it is lawful to keep in stock or send out spirits, or as regulate or relate to the intercourse or removal of *British* spirits made in *England*, *Scotland*, or *Ireland* respectively, or as relate to the distillation of spirits in *England* for exportation to *Scotland*, or in *Scotland* for exportation to *England*, or to the several other matters and things expressly provided for by this act, but not otherwise, and so much and such parts only as aforesaid of the said several acts, shall be and are hereby repealed accordingly; save and except so far as the said acts or any of them repeal or repeals any former act or acts, or any part or parts of any former act or acts, and except also so far as the said acts or any of them relate or relates to the charging, recovering, prosecuting, suing for, levying, paying, accounting for, allowing, abating, or mitigating of any duty, or any arrear thereof, which shall have been or shall be chargeable or payable on any such spirits, or on any wort or wash, under the said acts or any of them, or of any fine, penalty, or forfeiture for any offence against the said acts or any of them, which shall have been or shall be committed at any time on or before the 5th day of *January*, 1826; all which suits or other proceedings, matters, and things, shall and may be had and proceeded on, and shall remain, and be, to all intents and purposes whatsoever, as if the said acts had not been repealed in manner aforesaid: Provided always, that it shall not be lawful to make or distil any spirits under the aforesaid laws and regulations hereby repealed, from or after the 10th day of *October* 1825, on pain of forfeiting the sum of 500*l.* or 20*s.* *per* gallon for every gallon of the spirit so made or distilled, at the election of the commissioners of excise, or person who shall inform or sue for the same.

6 G. 4. c. 80. From Jan. 5. 1826, so much of the acts in force for granting duties on British spirits and licences, and regulating the trade of distillers and sellers of spirits, &c. in England, repealed.

No spirits shall be made or distilled under the laws repealed, after the 10th October, 1825.

§ 2. *New duties of excise are imposed* upon spirits made or dis- New duties.

6.4. c. 80.

tilled in *England*; and upon spirits made and extracted in *Scotland* or *Ireland*, to be imported to *England*.

cences.

§ 3. New duties of excise are imposed upon licences required to be taken out annually by distillers, rectifiers, and compounders, dealers in and retailers of spirits in *England*.

§ 5. Such duties to be raised and collected as other duties of excise.

person shall
p any still
atever, with-
a licence
der the provi-
ns of this act.

§ 6. From and after the commencement of this act, it shall not be lawful for any person or persons in *England*, to have or keep any still whatever, for the purpose of making or distilling, or rectifying or compounding spirits, without having first obtained a licence for that purpose, under the provisions of this act, signed by the commissioners of excise, or any two of them, or by some person or persons directed or employed by them to grant such licence, or by a collector and supervisor of excise within their respective collection and district, according to the law or laws of excise for granting licences; and every such licence shall and may be according to such form, and shall contain such particulars as the said commissioners of excise shall and may from time to time direct; and every such licence to be granted under the provisions of this act shall continue in force until and upon the 10th day of *October* next after the date thereof, and no longer: Provided, that persons in partnership, carrying on any one such trade or business in one house or place only, shall not be obliged to take out more than one such licence in any one year; and that no one licence which shall be granted by virtue of this act, shall authorise or empower any person or persons to whom the same shall be granted, to have, keep, or make use of any still, or to prepare or make any wort or wash, or to distil any wash, low wines, or spirits, or rectify or compound any spirits, in any other house or premises than the house or premises mentioned in such licence.

ence to be
ewed an-

§ 7. It shall not be lawful for any person at any time after the 10th day of *October* next after the date of any such licence for

ound any spirits, every such distiller, rectifier, or compounder 6 G. 4. c. 80.
hall forfeit the sum of 500*l.*; and all such wort, wash, low
ines, spirits, and feints, and all vessels and utensils containing
ie same, shall be forfeited, and may be seized by any officer of
xcise.

§ 9. No licence shall be granted to or be held by any person or No person to be licensed or to make entry of any house or still for making wash, low wines, or spirits unless he shall occupy a tenement of 20*l.* per annum, and shall pay parish rates; or unless such distillery be in or within one quarter of a mile of a market-town of 500 inhabited houses, except distillers established and licensed on the 5th April, 1825.
ersons to have, keep, or make use of any still for making or dis-
illing spirits, nor shall any person or persons be permitted to
ake entry of any house or place, or of any still or utensil for
aking or distilling wash, low wines, or spirits, unless such person
r persons shall be an inhabiting householder, occupying a tene-
ient or tenements of the yearly value of 20*l.* or upwards, and for
hich, he, she, or they shall be accordingly assessed in their own
ame, and shall also pay to the parish rates in the several parishes
r places in which they shall respectively reside, or unless such
ouse or place (except any distillery established and licensed on
he 5th day of *April*, 1825,) shall be situated within, or within
ne quarter of a mile of a market-town, containing at least 500
nhabited houses; and that no entry of any house, place, still, or
tensil, for making or distilling of wash, low wines, or spirits, shall
e of any avail to any person not so qualified, or for any longer
ime than the person or persons so making entry shall be so qua-
ified, or where such house or place, except as aforesaid, shall not
e so situated as aforesaid; and every person making or distilling
wash, low wines, or spirits, and not qualified as aforesaid, or in any
house or place except as aforesaid, not so situated as aforesaid,
shall, notwithstanding any entry by him, her, or them made, be
deemed and taken to be persons making and distilling wash, low
wines, and spirits without entry, and shall be subject to the like
penalties and forfeitures as persons making and distilling wash,
low wines, and spirits without entry, are by this act in such case
made subject and liable.

§ 10. No licence to be granted under the provisions of this act, No person to keep a still of less than 400 gallons, or to use in any distillery more than two wash-stills and two low wine-stills, if he keeps any still of less content than 3000 gallons.
shall authorise any person to have, keep, or make use of any still
or other utensil for the making or distilling of low wines or
spirits, the body of which without the head thereof shall be of
less capacity or content than 400 gallons; and it shall not be lawful
for any distiller, keeping or using any still of smaller content with-
out the head than 3000 gallons, to keep or use in any distillery at
the same time more than two wash-stills and two low wine-stills,
upon pain of forfeiting for every still kept or used by any such
distiller at the same time, to distil wash or low wines respectively,
above the number aforesaid, the sum of 100*l.* for every such fur-
ther still, and for every time that the same shall be so used; and Penalty, 100*l.*
every such further still shall be forfeited, and shall and may be
seized by any officer or officers of excise.

§ 11. Every person making or keeping any wash prepared or fit All persons having wash fit for distilling and a still, shall be deemed common distillers.
for distilling or making low wines or spirits, or any low wines or
feints, and having in his, her, or their custody or use any still or
tills, shall be deemed and taken to be, and is hereby declared to
e a distiller, liable to the several duties of excise, and to the se-
eral penalties, fines, and forfeitures imposed by this act relating
o distillers.

§ 12. *If any wort shall be brewed* or made by any distiller, or if Distillers not to brew or employ
ny still shall be made use of by any distiller, rectifier, or com-

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pounder, at any time between the hour of eleven of the clock in the afternoon of any *Saturday*, and the hour of one of the clock in the forenoon of the next succeeding *Monday*, every such distiller, rectifier, or compounder, in each and every such case, shall forfeit the sum of 50*l*.

§ 13. Every person who shall be licensed under this act to keep any still for distilling spirits, shall, after being so licensed, and before making such entry as is by this act required of any still or other vessel or utensil to be used by such person, erect and keep the several vessels hereinafter enumerated, and in the manner and for the purposes hereinafter described; that is to say, one vessel to be called a wash-charger, one other vessel to be called a low wines' receiver, one other vessel to be called a low wines' and feints' charger, one other vessel to be called a feints' receiver, one other vessel to be called a spirit-receiver, and, except as hereinafter mentioned, one other vessel to be called a spent lees' receiver.

§ 14. Provided that there shall not be erected or kept in any distillery more than one such wash-charger, and one such spirit-receiver, nor more than two such low wines' receivers, nor more than two such feints' receivers, nor more than two such low wines' and feints' chargers; and if any greater number of such vessels and utensils as aforesaid shall be found in any distillery, the distiller in whose distillery the same shall be found shall forfeit 200*l*., and all such vessels exceeding the number aforesaid, together with the contents thereof, shall be forfeited, and may be seized by any officer of excise.

§ 15. Every such wash-charger shall be a close-covered vessel, and the content thereof shall not be less than that of the largest wash-still; and every such wash-charger shall be connected with the wash still or stills by one close metal pipe to each such still, having a cock or cocks thereon, one end of which pipe shall be fixed into the bottom of such wash-charger, and the other end thereof shall be fixed into each such still; and to such wash-charger there shall

low wines' still, and fixed into every such feints' receiver or receivers, so that all feints running into such pipe from such safe shall immediately be discharged therefrom into such receiver or receivers, which receiver or receivers shall not have any communication with any vessel or utensil whatsoever, except as aforesaid; and every such low wines' and feints' charger shall be a close-covered vessel, connected with the low wines' still or stills by a close metal pipe to each such still, having a cock or cocks thereon, one end of which pipe shall be fixed into the bottom of such charger, and the other end shall be fixed into each such still, and each such charger shall have communication with the low wines' and feints' receivers respectively, by means of close metal pipes, one end whereof respectively shall be fixed to each such charger, and the other end whereof shall be attached to the pump or pumps to be so fixed as aforesaid in the low wines' receiver or receivers, and feints' receiver or receivers respectively, and such charger shall not have any communication with any other vessel or utensil whatever, except as aforesaid; and every such spirit-receiver shall be a close-covered vessel, and shall not have any communication with any vessel or utensil whatever, except with the safe of the low wines' still, by means of one close metal pipe, externally visible for its whole length attached to and leading directly from such safe at the end of such worm, and fixed into such spirit-receiver in such manner as that all spirits running therein from such safe shall run directly and be discharged therefrom into such spirit-receiver without resting in the said pipe, and in every such spirit-receiver there shall either be a pump placed and fixed for emptying the same, or a proper discharging cock for drawing off the spirits therefrom; and that each and every such charger and receiver shall be erected and kept in a convenient and public situation in the still-house, or to the approbation of the commissioners of excise, and exposed to open view and easy of access and inspection to the surveying officer on all parts thereof, and each such charger and receiver respectively shall have a sufficient cover thereon, with a rectangular dipping-hole cut in such cover, not more nor less than an inch square, and in which dipping-hole there shall be placed such dipping-rod as shall be provided by the proper officer, who shall secure such rod in such manner as to him shall seem expedient, to prevent the removal thereof out of any such charger or receiver; and every such spent lees receiver shall be a close covered vessel, and shall not have any communication with any vessel or utensil whatsoever, except with the low wines' still, by means of one close metal pipe, externally visible for its whole length, attached to and leading directly from such still, and fixed into such spent lees receiver, and which pipe shall be the only discharge-pipe of such still, having a cock thereon secured as the supervisor or surveyor surveying such distillery shall direct and approve, and in the bottom of which receiver shall be an internal safe and secure plug in a discharge-hole, and every such receiver shall have one other opening, not more than one third of the depth of such receiver from the top of such receiver, covered and secured by an internal metal plate, perforated with circular holes of not more than four tenths of an inch in diameter, and such receivers shall have no other opening whatsoever; and if any charger or receiver, or pipe therefrom, *or cock therein, shall be* made use of in the distillery of

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Description of low wines' and feints' chargers.

Description of spirit-receiver.

Dipping-rods to be fixed in chargers, receivers, &c.

Description of spent lees receiver.

Penalty for constructing

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Chargers or receivers contrary hereto, 100*l*., and 20*l*. for every day during which they remain.

any distiller which shall not be erected, kept, and constructed in manner herein directed, or which shall have any hole therein except the trap-door in the cover thereof, properly secured by the officer for examining or cleansing such receiver respectively, or any communication with any other vessel or utensil whatsoever, other than as by this act is required, authorised, and allowed, then and in every such case such distiller shall forfeit the sum of 200*l*. and also the sum of 20*l*. for every day during which such charger or receiver, or pipe or cock, shall remain in the distillery of such distiller.

There shall not be any pipe or any still, except as prescribed, on penalty of 200*l*.

§ 16. If in any distillery, or any house for distilling, rectifying, or compounding spirits, or any place adjoining thereto, there shall be any pipe or conveyance whatsoever leading directly or indirectly to or from any still, or from the head thereof, or any opening whatever, into or out of any still, other than such pipes, conveyances, and openings as are prescribed by this act, or if there shall be any opening whatever into or out of the worm of any still, except the communication which such worm shall have with the still or the head thereof, and the opening into the safe at the end of such worm, save and except such air-valve or conductor as shall be approved of by the commissioners of excise, or such person as they shall employ, then and in every such case, the distiller, rectifier or compounder so offending, shall forfeit the sum of 200*l*.

Distillers shall make holes or openings in the breast of their stills not less than two inches in diameter, through which officers may take samples.

§ 17. In the breast of every still used by the distiller, there shall be a hole or opening made, whereby the officers of excise may be enabled to take gauges and samples, at the time and in the manner required by this act; and such hole or opening shall be not less than two inches in diameter, and shall be contrived so that the officers may take a sample or samples from the still with a phial, to be drawn perpendicularly through the same, and also, so that any such still may be thereby cleansed, subject to such directions as the said commissioners of excise may think fit to give in that behalf; and proper locks and fastenings shall be provided by the supervisor of excise for the district, at the expense



have been locked and secured by the officer of excise, every such distiller shall for every such offence or neglect respectively forfeit and lose the sum of 200*l.* 6 G. 4. c. 80.

§ 18. The end of every worm belonging to every still in the distillery of every distiller shall be enclosed and secured in such manner and by such mechanism and means as the commissioners of excise shall direct, and shall for that purpose provide; and that all low wines, feints, and spirits, from time to time running from the end of such worm, shall run from thence into a safe, inclosed and secured as aforesaid, and shall be conveyed directly and by such a pipe and pipes as aforesaid, open externally to the inspection and examination of the officers for its or their whole length from such safe into the receivers respectively, as the case may be, of such distiller; and if upon demand by the proper supervisor or surveyor, the end of every such worm in the distillery of such distiller shall not be enclosed and secured, and at the expense of every such distiller maintained and kept enclosed and secured by such mechanism and means as shall be so directed and provided as aforesaid, or if the whole of the low wines, feints, or spirits, coming from such worm, shall not be run into such safe so enclosed and secured as aforesaid, or if such low wines, feints and spirits respectively, and every part thereof, shall not be successively conveyed from such safe, into the low wines' receiver, feints' receiver and spirit-receiver respectively, directly and by such a pipe or pipes as aforesaid, or if such mechanism and means of enclosing the end of such worm and safe as aforesaid shall not be affixed and kept and preserved affixed as aforesaid, or if at any time after the end of any such worm and any such safe are enclosed and secured as aforesaid, the mechanism or means by which the same shall be enclosed and secured as aforesaid, or any part thereof, shall be destroyed or injured, or if by any art or contrivance any access shall be gained or had, except by the sample-cock of such safe, without notice to, and with the knowledge of, and in the presence of the officer, to the enclosed end of such worm, or to any low wines, feints, or spirits, from the time of the extraction or distillation thereof in any such still until the same have been taken account of by the officers in the proper receiver or receivers, or the officers shall be in any manner prevented from or hindered, baffled or defeated in ascertaining by such apparatus the strength and quality of any low wines, fines or spirits, whilst running, or in taking a true account in such receiver or receivers of all the low wines, feints, and spirits distilled or made by such distiller, then and in every such case every such distiller or other person or persons shall for every such offence forfeit the sum of 200*l.*: Provided that if enclosing and securing the end of such worm or safe as aforesaid shall upon experiment be found to injure the quality of the spirits run therefrom, it shall be lawful for the commissioners of H. M.'s treasury of the U. K. of *Great Britain* and *Ireland*, or any three of them, upon proof thereof made to their satisfaction, to order and direct that no distiller as aforesaid shall be required to enclose any such worm-end or safe as aforesaid.

The end of the worm of each still shall be enclosed and secured, and the spirits run into a close safe, &c.

Penalty, 200*l.*

If enclosing the worm be found prejudicial, treasury may order disuse of such close safe.

§ 19. There shall be a discharge-cock fixed to every still, kept for the making or distilling of low wines or spirits, to be kept safely and securely locked by the proper officer of excise, except when opened by *such officer, on* reasonable notice by the distiller,

Distiller shall keep a discharge-cock to each still.

6 G. 4. c. 80.

not oftener than once in six hours, and such discharge-cock shall not be more than three feet distant from the body of such still, or eighteen inches from the brick-work, and shall be firmly attached to such still by a straight metal pipe; and such discharge-cock and pipe shall be so fixed and placed, as that the officers of excise may at all times have free and convenient access to the same; and if any distiller shall have or keep any still to which there shall not be a discharge-cock attached, and safely and securely locked, in the manner herein directed, or if there shall not be such pipe as herein prescribed and directed, or if any distiller shall open, injure, or alter such cock, except on notice to and in the presence of the officer, and with his consent, then and in each and every such case, such distiller shall forfeit the sum of 50*l.*: Provided, that no such discharge-cock shall be locked by the officer where a spent lees' receiver is provided and fixed, according to the provisions of this act.

Penalty, 50*l.*

Distiller shall keep a proper discharge-cock or plug in each fermenting wash-back.

§ 20. Every distiller shall provide and fix to the satisfaction of the supervisor, a proper discharge-cock or plug and plug-hole in every fermenting wash-back, through which cock or plug-hole the wash in such wash-back shall from time to time be conveyed, by a main pipe or open trough, into the jack-back, if any, or into the wash-charger; and such main pipe or trough shall be placed and fixed in such manner that all wash or liquor put therein shall forthwith run and be discharged from thence into such jack-back or wash-charger, as the case may be, and not elsewhere, except by a sewer-cock fixed on such main pipe, and properly secured and fastened; and there shall not be any other pipe or conveyance entering into or passing out of any such wash fermenting back, except the pipe for conveying wort into such fermenting back from the coolers; and if such discharge-cock or plug shall not be provided and fixed as aforesaid, or if such pipe or trough shall not be placed and fixed as aforesaid, or if such sewer-cock thereon shall not be fixed and secured as aforesaid, or if there shall be any other pipe or conveyance to or from any fermenting back, except as aforesaid, then and in every such case, such distiller shall forfeit the sum of 200*l.*: Provided that nothing herein contained shall prevent any distiller from placing any close metal pipe or pipes in, but not opening into any wash-back, for the purpose of conveying through such back, hot or cold air, or water, for the purpose of promoting or retarding the fermentation of the worts or wash contained in such back.

Penalty, 200*l.*

Construction of cocks required to be used.

§ 21. Every cock required by this act to be kept or used shall be made and constructed in such manner as shall be from time to time prescribed, and directed or approved by the commissioners of excise; and if any cock required by this act to be kept or used, shall be made, constructed, or used otherwise or differently than as shall at that time be directed, prescribed, or approved by the commissioners of excise, the distiller, rectifier, or compounder, by whom such cock shall be kept or used, shall forfeit the sum of 50*l.*

Penalty, 50*l.*

Distiller shall provide all such proper cocks, pumps, and fastenings, &c. at his own expense.

§ 22. Every distiller, and rectifier, or compounder shall, at his own expense and charge, provide, maintain, and keep the several utensils, cocks, pumps, pipes, and troughs, which are required by this act, and shall also provide, maintain, and keep, at the expense and charge of such distiller, rectifier, or compounder,

r and sufficient fastenings for securing the several cocks and 6 G. 4. c. 80.
required by this act to be secured, and for securing the
of or belonging to the chargers and receivers herein-before
ned respectively, and also for securing the pumps, vessels,
tensils permitted, allowed, or required for the purposes
ned in this act; and it shall be lawful for any officer of
, surveying the distillery of any distiller, to lock, secure,
sten the several cocks, plugs, covers, pumps, pipes, vessels,
ensils, for which fastenings are required to be provided, in
nanner as the commissioners of excise may direct as afore-
nd to keep the same and each and every of them so locked,
d, and fastened at all times, except when such officer shall
uired, under the provisions of this act, to attend, and shall
to open and unlock the same.

. All such cocks, plugs, pumps, fastenings, pipes, troughs, her utensils required or permitted or allowed by this act, e made, placed, affixed, and kept at the expense of the r, rectifier, or compounder, in proper repair and condition, satisfaction of the supervisor of excise, and shall from o time be altered and repaired at the expense of such dis- rectifier, and compounder, as such officer shall require; and e several locks and keys which shall be necessary for the g and securing any still or any other vessel or cock, or utensil, shall be supplied by such supervisor at the expense h distiller, rectifier, and compounder; and such officer shall ay from time to time cause all and every or any such locks and o be altered, repaired, or renewed, as he may think fit and ary for the purposes of this act, at the expense of such dis- rectifier, or compounder; and if any distiller, rectifier, or under shall not, at his own expense and charge, before he roceed to brew or distil, rectify or compound spirits, provide, and affix, and shall not afterwards maintain, all such cover- fastenings, cocks, pipes, pumps, troughs, and utensils, or them, to the satisfaction of the proper supervisor, or shall use the same or any of them to be altered, amended, re- , or renewed, or shall not on demand pay such supervisor such locks or keys as such supervisor shall supply, alter, , repair, or renew for the purposes aforesaid, or if at any ny such cover, fastening, cock, pipe, pump, lock, or key e broken, damaged, or injured, or if any person, not being oper officer of excise, shall open the same or any of them, ll make, procure, or use, or cause to be made, procured, or any false or duplicate key, or any instrument for breaking ming any such cock, lock, or fastening, or if any distiller, r, or compounder shall, in the construction of any such fastening, cock, pump, or pipe, cause or procure the same o made, or shall knowingly use the same or any of them o made, as that the said vessels or utensils, or any of them, e employed, opened, removed, filled, or emptied in the ab- of the proper officer of excise, so as to avoid, or in any r defeat the security intended to be given or provided by the regulations of this act, every such distiller, rectifier, or under, or person so offending, shall for each and every such forfeit the sum of 200*l.*

All such cocks, fastenings, &c. shall be kept and affixed to the satisfaction of the officer.

Penalty, 200*l.*

6 G. 4. c. 80.

Each back and fixed vessel for keeping spirits shall have a dipping-place constructed as herein, on penalty of 200*l.*

§ 24. At or near the top of every fermenting wash-back, and at or near the top of every fixed and entered vessel for storing or keeping spirits in the premises of any distiller, rectifier, or compounder, dealer in or retailer of spirits, there shall be an opening or dipping place, at which the officer may conveniently take his dip or gauge of the contents of such vessel, and a plate of brass or other metal shall be fixed and shall always remain fixed at such dipping-place, to secure the same from being worn or altered, and all such backs and vessels respectively shall be gauged and tabled by the officers of excise in such manner as shall be directed by the commissioners of excise in that behalf, and shall be placed and kept in convenient situations, and shall be at all times easy of access to the officer, for his more readily and effectually inspecting and examining it in every part, and taking the dip or gauge thereof; and if in any such back or vessel there shall not be such opening or dipping place so constructed and secured as aforesaid, or if any such back or vessel shall not be placed and kept in a convenient situation, and easy of access to the officer as aforesaid, or if the officer shall at any time, by any means whatever, or in any manner whatever, be prevented from ascertaining the quantity and gravity, or either of them, of any wort or wash contained in any fermenting wash-back, or the quantity or strength of any low wines, feints, or spirits in any vessel, then and in every such case such distiller, rectifier or compounder, dealer, or retailer offending therein, shall forfeit the sum of 200*l.*

Penalty if dipping place of any vessel be altered, 200*l.*

§ 25. If the opening or dipping-place, or the level of any still, back, receiver, or other vessel or utensil as aforesaid, shall be in any manner altered, or if any device or contrivance whatever shall be used to deceive any officer in taking any dip or gauge of any still, back, receiver, or other vessel or utensil, as aforesaid, or to prevent any officer from taking a true account of the quantity of wort, wash, low wines, feints, or spirits which may be contained in any still, back, receiver, or other vessel or utensil as aforesaid respectively, then in each and every such case such distiller, rec-



entry of such new still, back, receiver, vessel, utensil, or pipe in manner herein-before mentioned, and conforming in all respects to the regulations in this act contained in that behalf. 6 G. 4. c. 80.

§ 27. Provided that it shall be lawful for the commissioners of excise, by any instrument in writing under the hands of two or more of them, to permit and allow any licensed distiller or rectifier, working under the regulations of any act or acts in force prior to the passing of this act, to keep or use such of the vessels or cocks already fixed or used in the distillery of such distiller, as shall in the judgment of such commissioners be secure, and adapted to the purposes for which such vessels or cocks are respectively prescribed or required by this act; and that no distiller to whom such permission shall be granted, shall be liable to any of the penalties imposed by this act, in respect of such distiller keeping or using any such vessels or cocks so permitted, although the same may not be conformable with the provisions of this act; any thing herein-before contained to the contrary notwithstanding. Commissioners of excise may authorise distillers to use their present utensils.

§ 28. Whenever any officer of excise shall require that the water contained in any worm-tub in or belonging to any distillery, at any time when such still shall not be at work, shall be drawn or run off, and the tub and worm cleaned, the water shall forthwith be drawn or run off, and the tub and worm cleansed by the distiller, his or her servants or workmen accordingly; and if the water shall not be so drawn or run off at the request of such officer, and the tub and worm forthwith cleaned, and the water kept and continued out of such worm-tub for the space of two hours, or until the surveying officer has finished his inspection and examination of such tub and the worm therein, the distiller in whose distillery such worm-tub shall be situate, shall forfeit the sum of 200*l.*; and it shall be lawful for such officer to draw or run off, and keep drawn and run off, such water, or so much thereof, and for so long time as he shall think necessary. Officer may order water to be drawn off from the worm-tub, for examination of worm and tub. Penalty for refusal, 200*l.*

§ 29. Every distiller, rectifier or compounder, and dealer in spirits, shall cause to be legibly cut, branded, or painted on the outside of both of the heads or ends of each rolling or movable cask used by him or her for keeping or delivering out spirits, and shall at all times keep thereon so cut, branded, or painted, the full and true number of gallons which every such cask shall be capable of containing, together with his or her name or firm of trade, and the name of the place where his or her stock is kept; and every such cask which shall be found containing spirits without the full and true number of gallons which the same is capable of containing, and the name and place aforesaid, being so cut, branded, or painted thereon, together with the spirits contained therein, shall be forfeited, and shall and may be seized by any officer of excise. True content to be cut, branded, or painted on movable casks, and also the name and place of stock of the trader.

§ 30. Before any distiller shall give any notice of brewing or making any wort or wash as by this act is required, and also before such distiller shall commence to brew or make any wort or wash, and before any rectifier or compounder shall receive, rectify, or compound any spirits, or any dealer or retailer shall receive or sell any spirits, each distiller, rectifier or compounder, dealer and retailer respectively shall make entry, by delivering or causing to be delivered to the proper collector of excise, or other officer authorised to receive the same, an account in writing, signed by Entry to be made of the several places and utensils of trade.

3 G. 4. c. 80.

such distiller, rectifier or compounder, dealer and retailer respectively, to be entered and registered by such collector or other officer, setting forth his or her name or names, and place or places of abode, and the place where the premises intended to be entered of such person or persons is or shall be situated, and also setting forth a true description of all and every vessel and vessels, and utensil and utensils whatsoever, erected and intended to be therein used in or for the purposes of such trade or business respectively, and the number of gallons which each and every or any still, together with the head thereof, is capable of containing, and specifying fully and distinctly in every such account the purpose for which each vessel and utensil is intended to be used; and also an account of the several houses, rooms, and places wherein any part of the business of such person is to be carried on, or for distilling, rectifying, or compounding any spirits, or in which any spirits are to be kept; and in such written account every such utensil, and also every such house, room or place, shall be distinguished by the separate and distinct number and name relating thereto respectively, which shall have been painted thereon pursuant to the provisions of this act; and every such account shall be in such form, and shall contain such particulars as shall be from time to time directed and required or authorised by the commissioners of excise.

Utensils and stores shall be marked.

§31. Every distiller, rectifier or compounder, dealer and retailer respectively, shall paint, or cause to be legibly painted, and shall keep or cause to be kept so painted, upon some conspicuous part of every utensil intended to be used by him or her in his or her trade or business respectively, and on the outside of the door of every apartment and place wherein any part of the trade or business of such person is to be carried on, or wherein any spirits are to be kept, the name of each such utensil, apartment, or place, according to the purpose for which the same is respectively intended to be used; and shall also paint in manner aforesaid, separate numbers relating to each and every such utensil, except



and if any pipe shall be used by any distiller, rectifier or compounder, not set forth as aforesaid, or for any other purpose than shall be set forth as aforesaid, or which, except as aforesaid, shall not be fixed, or placed, or painted, and kept painted as herein directed, or which shall be painted otherwise than as herein directed, such distiller, rectifier or compounder shall forfeit the sum of 50*l.* 6 G. 4. c. 80. Penalty, 50*l.*

§ 33. It shall not be lawful for any distiller to set forth in the account by this act required to be signed and delivered, that any still or vessel mentioned therein is intended to be used for more than one purpose respectively; and every such entry in which any still or other vessel shall be described by any distiller as intended to be used for two or more purposes, shall, in respect to such still or vessel, be deemed and taken to be void; and such distiller shall, in every such case, forfeit the sum of 200*l.* Distiller shall not enter any utensil to be used for more than one purpose, on penalty of 200*l.*

§ 34. If any still, or vessel, or utensil whatever, shall at any time be used or applied by any distiller, rectifier or compounder, for or to any purpose connected with the distillation, rectification or compounding of spirits, or if any fixed cask shall at any time be used by any distiller, rectifier or compounder, or dealer or retailer as aforesaid, for holding or keeping spirits; or if any house, room, or place shall be used by any distiller, rectifier or compounder, dealer or retailer of spirits, for the carrying on any part of the process of distillation, rectification or compounding of spirits, or for the keeping of any spirits, which still, vessel, utensil, cask, house, room or place, shall not have been set forth, or shall not have been numbered as set forth, or shall be in any other place than shall be set forth, or shall be used or applied for or to any other purpose than shall be set forth, or shall not in all respects correspond with the representation thereof, as set forth in the account by this act required to be signed and delivered by such person, then and in every such case he or she so offending, shall forfeit the sum of 500*l.* for every such offence; and every such still, vessel, or other utensil, or cask, and all spirits or materials for distilling spirits, which shall or may be contained in any such still, vessel, utensil, or cask, or which shall or may be found in any such house, room or place, shall be forfeited, and may be seized by any officer of excise. Penalty for having any utensil or place not entered, &c., 500*l.*

§ 35. No person or persons whomsoever shall erect, set up, enter, or make use of any house or premises whatsoever, in *England*, for rectifying or compounding spirits, or for receiving or keeping spirits, by any rectifier or compounder of spirits, or for preparing wort or wash, or for making or distilling spirits, or for receiving or keeping spirits, by any distiller or maker of spirits, within the distance of one quarter of a mile in a direct line from any other house or premises which shall be entered or used for preparing wort or wash, or for making or distilling spirits, or for receiving or keeping spirits, by any distiller or maker of spirits; nor shall any person or persons whomsoever erect, set up, enter, or make use of any house or premises whatsoever, in *England*, for preparing wort or wash, or for making or distilling spirits, or for receiving or keeping spirits, by any distiller or maker of spirits, within the distance of one quarter of a mile in a direct line from any other house or premises which shall be entered or used for *rectifying* or compounding spirits, or for *receiving or keeping spirits, by* any rectifier or compounder of Houses for rectifying or compounding spirits not to be used within one quarter of a mile of a still-house, nor shall a still-house be used within one quarter of a mile of a house for rectifying or compounding spirits, or of another distillery; penalty, 500*l.* per week.

G. 4. c. 80.

spirits, or for preparing wort or wash, or for making or distilling spirits, or for receiving or keeping spirits, by any distiller or maker of spirits, on pain of forfeiting, in each and every such case, the sum of 500*l.* for every week that any such house or premises shall be erected, set up, entered, or used respectively, contrary to such prohibition as aforesaid; and all and every entries or entry of any such house or place, so made use of contrary to the true intent and meaning of this act, shall be null and void to all intents and purposes whatsoever: Provided that the prohibition and penalty aforesaid shall not extend or apply, or be deemed or construed to extend or apply, to or in respect of any house or premises which may have been erected, set up, entered, used, occupied, or employed contrary to the prohibition aforesaid, for preparing wort or wash, or making or distilling spirits, or for rectifying or compounding, or for receiving or keeping spirits repectively by any distiller or maker of spirits, or any rectifier or compounder of spirits, on the 5th day of *April* in the year 1825, so long as such house or premises continue to be so entered and used, and so long as no part of any such house or premises entered, used, occupied, or employed by any distiller or maker of spirits, and any part of any such house or premises, entered, used, occupied, or employed by any other distiller or maker of spirits, or any rectifier or compounder of spirits, shall have any way, opening, or communication whatsoever by which any wort, wash or spirits can be removed or conveyed from the one into the other of such houses or premises, other than by carriage of a cart or waggon through and by an open street or road.

Distiller and rectifier or compounder not to be a maker of beer, sweets, vinegar, cider, or perry, or refiner of sugar, &c.

§ 36. No distiller or maker of spirits, or rectifier or compounder of spirits, shall upon the same premises carry on the trade or business of a distiller, or maker of spirits, or of a rectifier or compounder of spirits, and of a brewer of beer, or of a maker of sweets, vinegar, cider or perry, or of a refiner of sugar; nor shall any distiller or maker of spirits enter or make use of any house or



mitted to withdraw such entry whilst any wash, low wines, or other materials preparing, or fit for distillation, are remaining in any of the places, or in any of the utensils so by him or her entered as aforesaid; but in every such case, the officer of excise, under whose survey such distiller shall then be, shall continue to survey the distillery, places, and utensils mentioned in each such entry, until all the wash, low wines, and other materials shall be worked off, and the duties charged on the produce thereof paid, or until the spirits made therefrom shall be legally removed from and out of the said entered places, and then, and not till then, shall any such entry made as aforesaid be withdrawn.

or utensils shall be withdrawn, whilst wash or other materials for distillation are remaining therein.

§ 38. Every distiller, rectifier or compounder, who shall be licensed under this act, shall forthwith cause to be painted, with letters publicly visible and legible, at least three inches long, the name or firm of such distiller, rectifier or compounder, at full length, and after such name, the words "licensed distiller," "rectifier or compounder," as the case may be; and every such distiller, rectifier or compounder, shall cause such painting to be in some conspicuous place on the outside of the front of the distillery or entered premises of such distiller, rectifier or compounder, over the gate or entrance-door thereto, not more than three feet from the top of such gate or entrance-door; and every such distiller, rectifier or compounder, shall preserve and keep up such painting during the continuance of his, her, or their licence; and in default of making such painting, or keeping the same so made, every such distiller, rectifier or compounder, shall, for every such offence, forfeit the sum of 50*l.*; and if any person, on or before whose house or other place any painting, board, or sign shall be affixed or erected, importing that such person is a distiller, rectifier or compounder, or exercises or carries on the trade of a distiller, rectifier or compounder, or purporting that such person is licensed so to do, shall not at the time be duly licensed for such purpose, then and in every such case, every such person shall forfeit the sum of 50*l.*

Distillers, rectifiers, and compounders shall affix board over distillery-gate, importing they are licensed, on penalty of 50*l.*

Penalty on unlicensed persons affixing such board, 50*l.*

§ 39. In case any officer or officers of excise shall know, or have cause to suspect that any private or concealed still, back, or other vessel, for making worts or wash, or for making or distilling low wines or spirits, or any privately-made spirits or low wines, or any wash or other materials preparing for distillation, are set up or kept in any house or place, then and in such case, if such house or place shall be within the limits of the chief office of excise, upon oath made by such officer or officers, before one or more justice or justices of the peace of the county, city, or liberty where such house or place shall be, or before the commissioners of excise, or any two or more of them; or in case the same shall be in any other part of *England*, upon oath made by such officer or officers before one or more justice or justices of the peace of the county or place where such officer or officers shall suspect the same to be so set up and kept, setting forth the ground of such his or their suspicion, it shall and may be lawful to and for the said commissioners of excise, or justice or justices of the peace respectively, before whom such affidavit or affidavits shall be made, if he or they shall judge it reasonable, by warrant under his or their respective hands and seals, to authorise and empower such officer or officers, by *day or by night, (but if in the night-time*, then in the presence

If any officer shall know of or suspect any private still, &c. within the limits of the head office, and make oath thereof before a justice or the commissioners; or in any other part, and shall make oath thereof before a justice of the county, &c. a special warrant to break open such suspected house, and to seize such stills, spirits, &c. may be granted;

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of a constable or other lawful officer of the peace, who are hereby required to be aiding and assisting therein,) to break open the doors, or any part of such house or place where he or they shall so know or suspect such private or concealed still, back, or other vessel, spirits, low wines, wash, or materials for distillation are so set up and kept, and to enter into such house or place, and to seize all and every such still, backs, or other vessels, and all such spirits, low wines, wash, and other materials preparing for distillation, which he or they shall find and discover, and either to detain and keep the same in the house or place where found, or to remove the same to the office of excise next to the place where the same shall be so discovered and found; and in case the same shall not, within ten days next after such seizure, be claimed by the true and lawful owner thereof, then the said stills, backs, and other vessels, spirits, low wines, wash, and other materials for distillation shall be absolutely forfeited, and the proprietor of any such private or concealed still, back, or other vessel, or the person in whose custody the same shall be found, whether such seizure be claimed or not, shall forfeit and lose for every place in which every such private still, back, or other vessel shall be so found, and also for every such still, back, and vessel found therein, the sum of 200*l.*; and if any person or persons shall obstruct, oppose, molest, or hinder any officer or officers of excise, or others acting in their assistance, in the due seizing any such private or concealed stills, backs, or other vessels, spirits, low wines, wash, or other materials for distillation, or in detaining or keeping the same in the place where found, or in removing the same, or any of them, after seizure, to the next office of excise as aforesaid, then and in every such case every person so offending shall forfeit the sum of 200*l.*

And if not claimed by the owner within ten days, the same shall be forfeited, and the proprietor, &c. shall pay 200*l.* for every such place and still, &c. found therein.

Penalty on obstructing officer, 200*l.*

Officers empowered to enter distilleries, and if obstruct-

§ 40. It shall be lawful for any officer or officers of excise at all times, as well by night as by day, to enter into every house, distillery, still-house, outhouse, and place whatsoever of or belonging to, or made use of by any distiller of spirits, and to search

6 G. 4. c. 80.

§ 41. In case any officer of excise, after having demanded admittance into the distillery of any distiller, rectifier, or compounder, and having declared his name and business at the gate or entrance-door, or at any window of such distillery, shall not be immediately and without delay admitted into such distillery, such distiller, rectifier, or compounder shall, for every such offence, forfeit the sum of 200*l.*; and if such officer shall not be immediately and without delay admitted into such distillery of any distiller, rectifier, or compounder, after having so demanded such admittance, it shall and may be lawful for such officer, and any person or persons acting in his aid or assistance, at all times, as well by night (if in the presence of a constable or other peace officer) as by day, to break open by force any of the doors or windows, or break through any of the walls of such distillery as shall be necessary to enter such distillery.

Penalty on not giving admission to officer after declaring his name and business, 200*l.* and the officer may break open distillery.

§ 42. If, on demand of any officer of excise made in the distillery of any distiller, or in the entered premises of any rectifier or compounder of spirits, strong, safe, and convenient ladders shall not be provided, and conveniently and firmly placed, and of length sufficient to enable the surveying-officer to ascend to and examine, and descend from any vessel or utensil in any such distillery, or rectifying or compounding house or premises, or to gauge or ascertain the content or capacity of any vessel or utensil therein; or if any such ladder shall not be fixed at or in any part of such vessel or utensil where such officer shall require; or if on any visits made by any officer of excise, on demand of any such officer, sufficient lights and sufficient aid or assistance shall not be supplied for the purposes of his or their gauging or ascertaining the content or capacity of any vessel or utensil, or of searching for and gauging and taking an account of all wort, wash, bub, low wines, feints, and spirits, and of all materials fit or proper for distillation in such distillery, or in the possession of such distiller, and all spirits in the possession of such rectifier or compounder, as well by day as by night, every distiller, rectifier, or compounder so offending, or on whose entered premises such neglect or offence shall take place, shall in any of the cases aforesaid for every such offence forfeit the sum of 100*l.*

Distillers, rectifiers, and compounders, shall furnish officer with ladder and lights, on penalty of 100*l.*

§ 43. It shall be lawful to and for any officer or officers of excise, or any person or persons acting in his or their aid or assistance, by night or by day, to break up any ground in any part of the distillery or entered premises of any distiller, rectifier, or compounder, or any ground near adjoining such distillery or premises, or any wall or partition thereof, or belonging thereto, or other place, to search for any pipe or cock, or any private conveyance or utensil, and upon finding any such pipe or conveyance leading therefrom or thereto, to break up the ground, house, wall, or other place through or into which such pipe or other conveyance shall lead, and to break up or cut away any such pipe, cock or other conveyance, and to turn any cock or cocks, and to examine whether such pipe or other conveyance may or can convey or conceal any wort, wash, or other liquor fit for distillation, or low wines, feints or spirits, from the sight or view of the officer, so as to hinder or prevent him from taking or keeping a true account thereof.

Officers may break up ground in distillery, to search for private pipes, &c.

§ 44. *It shall not be lawful for any* distiller to make or brew at *the same time any wort or wash, or* to make or distil any spirits

Distillers shall not distil at the

6 G. 4. c. 80.

same time spirits from grain and from sugar, or any other material.

from malt, corn or grain, or any mixture thereof, and from sugar or potatoes, or any mixture thereof respectively, or to make or brew any wort or wash, or distil any spirits from any other materials whatsoever; and if any such distiller shall at the same time make or brew any wort or wash, or shall make or distil any spirits from malt, corn or grain, or any mixture thereof, and from sugar or potatoes, or any mixture thereof respectively, or shall at any time make or brew any wort or wash, or distil any spirits from any other materials whatsoever, such distiller shall forfeit the sum of 200*l.*; and all such wort, wash and spirits shall be forfeited, and may be seized by any officer of excise.

Penalty, 200*l.*, &c.

Notice to be given by distiller of his intention to use sugar or potatoes.

§ 45. Every distiller who shall, under the regulations of this act, intend or desire to distil spirits from worts or wash, brewed and made from sugar or potatoes only, shall, six days before he shall commence to brew or make any wort or wash, give notice in writing to the proper officer surveying such distillery, in which notice shall be stated that such distiller intends to use sugar or potatoes only, not being mixed with any other materials whatever; and if, at any time after such notice shall have been given, any corn, grain or malt, ground or bruised, or other material for distillation, except sugar or potatoes, according to such notice as aforesaid, shall be found in such distillery, or in any store, mill, or other premises thereto belonging; or if any wort or wash, made of any materials, save and except sugar or potatoes only, as the case may be, according to such notice, shall be found in the distillery of such distiller, or in any store belonging to such distillery, then and in each and every such case such distiller shall (except in the case hereinafter provided) forfeit the sum of 200*l.*

Penalty for using grain after such notice, 200*l.*

Distiller using sugar or potatoes may commence using grain at the expiration of one

§ 46. Provided that if any distiller who shall have given any such notice of using sugar or potatoes only as aforesaid, shall intend to commence or to recommence to use the other of them, or to use corn or grain and malt, at any time when there shall not be any wort or wash, or sugar or potatoes respectively, in the dis-

a certain act, made in the 4th year of the reign of his present majesty, for granting certain duties of excise upon spirits distilled rom corn or grain in *Scotland* and *Ireland*, and upon licences for tills for making such spirits, and to provide for the better collecting and securing such duties, and for the warehousing of such pirits without payment of duty, for making or brewing wort r wash, and making and distilling spirits from malt only, unmixed rith any unmalted corn or grain, except that in the annual account f every such distiller, so far as shall relate to spirits made or distilled from sugar, he shall be chargeable and charged with duty fter the rate or proportion of one gallon of proof spirits for every our degrees of the declared gravity of the worts, from which such pirits were made or distilled. 6 G.4. c.80.

§ 48. Provided that if at any time or times during the recess of parliament, it shall, from the excessive price of corn, appear expedient to H. M., his heirs or successors, to prohibit the making of low wines and spirits from barley, malt, and any other sort of grain, and from meal and flour, or any mixture thereof, it shall and may be lawful to and for H. M., his heirs and successors, from time to time, by his or their royal proclamation or proclamations, to be issued by and with the advice of his or their privy council, or by his or their order in council, to be published in the *London Gazette* from time to time, to prohibit the making, extracting, or distilling of any kind of low wines or spirits from barley, malt, and any other sort of grain, and from meal and flour, or any mixture thereof, for any time or times during such recess, or until twenty days after the commencement of the then next session of parliament. During the recess of parliament, the king may, by proclamation, prohibit the distillation of spirits from corn.

§ 49. All wash which shall be made in the distillery of any distiller, shall be fermented in the fermenting wash-backs of such distiller, and shall be conveyed directly from thence into the wash-charger, and shall be conveyed from such charger into the wash-still or stills, there to be made or distilled into low wines, and all low wines shall be conveyed directly from the safe at the worm-end of the wash-still or stills into the low wines-receiver or receivers, and shall from thence be pumped up or conveyed into the low wines and feints charger or chargers, and shall be conveyed directly from such charger or chargers into the low wines-still or stills, there to be re-distilled, and all spirits produced by such re-distillation shall be conveyed directly from the safe at the worm-end of the low wines-still or stills into the spirits-receiver or feints-receiver or receivers, and so much of such spirits as shall be conveyed into such feints-receiver or receivers shall be pumped or conveyed directly from thence into the low wines and feints charger or chargers, and shall be conveyed directly from such charger or chargers into the low wines-still or stills to be re-distilled, and the produce of the last-mentioned re-distillation, and of every other re-distillation, shall in like manner be conveyed directly from the safe at the worm-end of the low wine-still or stills into the spirit-receiver, or into the feints-receiver or receivers, and no feints conveyed into such feints-receiver or receivers shall in any case be removed from thence, except by pumping or conveying such feints directly into the low wines or feints charger or chargers, from whence such feints shall be conveyed directly into the low wines-still or stills for re-distillation, until the whole of such feints shall be made into spirits, and conveyed and run into the spirit- General directions as to the mode and course in which wash, &c. shall be conveyed through the several utensils.

6 G. 4. c. 80.

receiver; and no spirits conveyed into the spirit-receiver shall be re-distilled or shall be removed from such receiver, except into the cellar or store-room of the distiller, in the manner hereinafter provided; and if any distiller shall ferment or suffer to be fermented any wash, or shall remove or distil, or suffer to be removed or distilled any wash, low wines, feints or spirits, contrary or otherwise than according to the directions and provisions aforesaid, or shall not convey and run the whole of the spirits made or distilled by him into the spirit-receiver, such wash, low wines, feints and spirits respectively, together with all vessels and utensils wherein the same may be contained, shall be forfeited, and may be seized by any officer of excise; and the distiller so offending, shall in every such case forfeit the sum of 200*l*., or 20*s*. for every gallon of such wash, low wines, feints or spirits so removed or distilled, and not conveyed and run into the spirits-receiver, at the election of the commissioners of excise, or person who shall inform or sue for the same.

Penalty on default, 200*l*. or 20*s*. for every gallon of wash, &c. not so conveyed.

Distiller shall brew and distil in alternate periods only.

§ 50. And for more effectually securing the duties on spirits granted by this act, and regulating the process of the distillation of such spirits, it is enacted, that in the distillery of every distiller, the periods of brewing and distilling shall be always alternate and distinct periods, one to be called the brewing period, and the other the distilling period; and that no wort, wash, low wines or feints, shall be distilled in any such distillery, and that no still in any such distillery shall be made use of from the commencement of any such brewing period until twelve hours after the expiration thereof; that is to say, from the commencement of any process of wetting, brewing, or mashing any malt, corn, or grain, or sugar, or potatoes, until twelve hours after every such process shall have ceased, and all the wort or wash in such distillery shall have been collected into the fermenting backs in such distillery, and that no malt, or corn, or grain, or sugar or potatoes, shall be wetted, brewed, or mashed, nor shall any wort or wash be made or produced in any distillery during any distilling period, that is

Penalty for acting contrary hereto, 500*l*.

brewing shall be finished, deliver as aforesaid the true quantity and weight of the materials intended to be, or which shall have been used or employed, and whether grain, or sugar, or potatoes respectively; and in case any mashing or brewing of any materials is commenced or made in the distillery of any distiller, without such notice having been given as aforesaid, such distiller shall forfeit the sum of 50*l.*; and it shall not be lawful for any such distiller to mix or cause to be mixed in any fermenting back or vessel the produce of two or more different brewings of wort or wash, or any part thereof, on pain of forfeiting for every such offence the sum of 200*l.* 6 G. 4. c. 80.

The produce of each brewing to be kept separate, on penalty of 200*l.*

§ 52. Every distiller, after having made such entry as is by this act required, shall, before commencing to brew or make any wort, and in like manner every such distiller, who shall at any time have discontinued making or brewing any wort for any longer period than one calendar month, shall, before re-commencing to make or brew any wort, give six days' notice in writing to the supervisor or officer surveying the distillery of such distiller, in which notice shall be set forth the day on which, and sorts of materials with which such distiller intends to commence or re-commence (as the case may be) making or brewing wort, and specifying the gravity of the wort or wash intended to be made in the distillery of such distiller; and in any such notice such gravity as specified shall not be less than 50 degrees, nor more than 90 degrees; and in case such distiller shall at any time be desirous of using wort of any other gravity than shall have been specified in such notice, but not being of a gravity less than 50 degrees, nor more than 90 degrees, such distiller shall in like manner, six days before the day on which he shall intend to use wort at any other gravity, deliver a notice, specifying the gravity of the wort intended to be used in such distillery, after the day specified in such last-mentioned notice, such distiller not having on such day any wort or wash in the distillery or possession of such distiller, and such day being at least one calendar month distant from the day mentioned in any last preceding notice which shall have been given by such distiller; and if any distiller shall commence, or after such discontinuance shall recommence the brewing or making any wort, or if any wort or wash shall be found in the distillery or possesion of any such distiller who shall not have given such notice in manner and in the respective cases aforesaid, or at any time before the day set forth as aforesaid in any such notice, or if at any time there shall be found in the distillery or possession of any distiller, except in the mash-tun or wort underback, or coolers or coppers in such distillery, any wort or wash, the gravity whereof shall exceed the particular gravity which shall have been specified in any such notice, then and in each and in every such case, all such wort or wash shall be forfeited, and may be seized by any officer of excise, and such distiller shall forfeit the sum of 200*l.*: Provided, that no vessel used by any distiller shall be deemed a wort-underback within the meaning of this act, unless the depth of such vessel shall be in every part thereof three feet at the least, nor unless such vessel shall be so situate in the distillery of any distiller, as that the wort shall run directly into the same from the mash-tun.

Notice to brew, and to recommence brewing.

Penalty on neglect, 200*l.* &c.

§ 53. Provided that any such saccharometer may be used for ascertaining *the gravity of wort or wash* under this act, as shall

Any saccharometer

6 G. 4. c. 80.

ed by the commissioners of excise may be used.

How degrees shall be ascertained.

from time to time be prescribed for that purpose by any order of the commissioners of excise, or any four of them; and that every degree of gravity to be ascertained by any saccharometer under the provisions of this act, shall be calculated in the following manner; that is to say, that distilled water being assumed as unity at the temperature of 60 degrees by *Fahrenheit*'s thermometer, every degree of such gravity shall be correspondent to a thousandth part of the specific gravity of such water; and all wort or wash shall for the purposes of this act be deemed and taken to be of the gravity at which the said saccharometer shall, on the application thereof, denote or indicate such wort or wash to be.

Declaration shall be given of the quantity and gravity of the wort when collected in fermenting back.

§ 54. All wort intended to be run or conveyed into any fermenting-back of any such distiller shall be conveyed into and collected therein within the space of eight hours after the running or conveyance of such wort shall have commenced into any such back, and the distiller shall immediately and without delay reduce all such wort to, should it exceed, the particular gravity which shall have been specified in any such notice, and deliver to the proper officer a declaration in writing, specifying the number of the back or backs in which such wort is contained, and the particular gravity of such wort, and also setting forth the quantity thereof, by stating the number of dry inches, that is to say, the number of inches not occupied or wetted by the wort, being the space between the proper dipping place of such back and the surface of the wort therein; and no yeast or barm or bub, or other matter or thing capable of causing fermentation, shall be added to or mixed with the wort, or allowed to be in such fermenting back for the space of two hours next after such wort shall have been collected in such fermenting back or backs, and reduced as herein directed, and after such declaration shall have been given thereof as aforesaid, unless the proper officer shall, within such two hours, have taken an account of the quantity and gravity of such wort; and if any wort shall be conveyed into and collected in any

Penalty on giv-

of which such account had been taken, or which shall exceed a quantity, by five *per cent.* or more, the wort or wash in such fermenting back, of which such account had been previously taken, all such wort or wash in such back shall be considered as new wort or wash, and not included in any former charge against the distiller in whose possession such wort or wash shall be found; and such distiller shall be charged with duty in respect of the whole wort or wash in such back, in like manner as such distiller is by this act chargeable in respect of any wort or wash not before charged, and the wort or wash of which such account had been previously taken in such back shall be deemed to be distilled or decreased, and the distiller shall be charged for a quantity of spirits in respect of such wort or wash so deemed to be distilled or decreased, in like manner as such distiller is chargeable under this act for any wort or wash actually distilled or decreased; and such distiller shall also for every such offence forfeit the sum of 200*l.* 6 G. 4. c. 80. tity previously ascertained by the officer, 200*l.*

§ 57. Every distiller who shall intend to make or prepare the composition called bub, or any other composition for inducing or increasing the fermentation of any wort or wash, shall from time to time, at least six hours previous to the beginning to make or prepare any such composition, give or cause to be given a notice in writing to the proper officer surveying the distillery of such distiller, specifying the time when, and the particular vessel or vessels in which such composition is to be made or prepared, and the particular wash fermenting back or backs into which the same is to be put, and also specifying the quantity of such composition to be put into every such back, which quantity shall not exceed the proportion of five gallons for every 100 gallons of the wort or wash to which such composition is to be so added; and it shall not be lawful for any distiller to have or use at any time any such composition of greater gravity than the gravity of the wort which such distiller shall at such time be authorised to use under the provisions of this act; and if any such composition shall be made or prepared in the distillery of any distiller contrary to the directions herein-before prescribed, or if the gravity of any such composition shall be increased at any time after the officer shall have taken an account thereof, or if the whole quantity of such composition shall not, as herein directed, be conveyed into the particular fermenting wash-back or backs specified in such notice, within 24 hours after the time specified in such notice for making such composition, then and in each and every such case the distiller in whose distillery every such offence or default shall be committed or made, shall forfeit the sum of 200*l.* Regulations for distillers making bub or other composition for exciting fermentation. Penalty on acting contrary to such regulations, 200*l.*

§ 58. When the whole wort or wash brewed or made in any distillery during any brewing period, shall be collected into the fermenting wash-backs in such distillery, and before the commencement of any distilling period in the distillery of such distiller, and before any still shall be made use of in such distillery for the distilling of such wort or wash, a declaration in writing, by or on behalf of such distiller, shall be delivered to the proper officer, that the whole wort and wash in the distillery of such distiller is collected into the fermenting wash-backs in such distillery, and thereupon it shall be lawful for the officer surveying such distillery at any time, not being less than twelve hours subsequent to the delivery of *such declaration, and* such officer is hereby autho- Distiller shall declare, before beginning to distil, that all wort and wash is collected into fermenting-backs, on penalty of 200*l.*

6 G. 4. c. 80.

rised and required to open any still or stills in such distillery, by removing such fastenings as prevent such still or stills from being used; and if any still in the distillery of any distiller shall be made use of before such declaration shall have been delivered as aforesaid, or before the expiration of such twelve hours as aforesaid, or if all the wort and wash in any such distillery shall not then be collected as stated in such declaration, then and in every such case such distiller shall forfeit the sum of 200*l.*

Distiller to give eight hours' notice before moving wash from fermenting-back to the wash-charger.

§ 59. Eight hours before any wash shall be conveyed from any fermenting wash-back in the distillery of any distiller, a notice in writing shall be given to the proper officer, by or on behalf of such distiller, in which shall be stated the number of the back in which such wash is contained, and the day and hour when such wash is to be removed, and such officer shall attend at the time specified in such notice, and after he shall have locked the charging-cock or cocks of the wash-still or stills, he shall remove all such fastenings as prevent the conveyance of such wash, from any back mentioned in such notice, into the wash-charger, and thereupon, forthwith and without delay, all the wash which shall be contained in such fermenting wash-back, or so much of such wash as such charger shall be capable of containing, shall be conveyed into such charger in manner prescribed in this act; and such officer, after having affixed and secured the fastenings which he had so removed, shall be at liberty and authorised to take an account of the true quantity thereof, and shall thereupon unlock the charging-cock or cocks aforesaid; and if any wash shall be removed before such notice shall have been given, or shall be removed or conveyed from any other fermenting-back, or at any other time or manner then shall have been mentioned in such notice, or before the proper officer shall have removed or secured respectively such fastenings as before-mentioned, and taken account of the true quantity of the wash in such charger, such distiller shall in each and every such case forfeit the sum of 200*l.*

Penalty on removal without notice, &c. 200*l.*

Officer may dis-

§ 60. It shall be lawful for any such officer as aforesaid, and he

shall have taken an account of the quantity and strength of such low wines; and if such low wines receiver shall not be emptied and cleaned out, or if such wash shall not be conveyed into such wash-still, or from such wash-back, as shall be required by such officer; or if such aid and assistance and fuel shall not be given to such officer in the distilling such wash into low wines, or in conveying the whole of such low wines into such receiver, or if such low wines shall not be kept in such receiver, unmixed as aforesaid, until such officer shall have taken such account as aforesaid, then and in every such case every such distiller shall, for each default or offence, forfeit the sum of 200*l.* 6 G. 4. c. 80. Penalty on default, 200*l.*

§ 62. In every such case, whether such low wines shall have been produced from wash distilled in any wash-still in such distillery, and conveyed into any low wines' receiver in such distillery as aforesaid, or shall have been produced from any sample of wash taken by such officer as aforesaid, and distilled in any still provided by the commissioners of excise as aforesaid, such officer shall ascertain the quantity of proof spirit in and equivalent to such low wines, according to the strength of such low wines; and if such quantity of proof spirits so computed shall, in any of the respective cases aforesaid, exceed the rate or proportion of one gallon and one quarter of a gallon of proof spirits from each and every one hundred gallons of such wort or wash, for and in respect of every five degrees of the gravity of such wort or wash which shall have been attenuated, as taken by the surveying officer; that is to say, for every five degrees of difference between the highest gravity of the wort from which such wash was produced, as declared by such distiller pursuant to this act, or as appearing on any account thereof taken by the officer, and the lowest decreased gravity of such wort or wash, as taken by the officer previous to the distillation thereof as aforesaid, then, and in each and every such case respectively, every such distiller shall forfeit the sum of 200*l.*; and also the sum of 6*d.* for every gallon of wort or wash contained in the wash-back from which such wash so distilled was removed or taken: Provided, that such officer shall pay to such distiller the value of every sample of wash which he shall so take away from such distillery, or return the produce thereof, and mix the low wines with the low wines of the wash-back to which they belong: Provided also, that such distiller, or any person acting in his behalf, shall and may be present at the distillation of any such wash, if such distiller or other person shall desire to be so present. Penalty if produce of wash distilled exceeds the proportion of one gallon and a quarter of proof spirits for every five degrees of gravity attenuated, 200*l.* &c.

§ 63. After any wash shall have been removed from any fermenting back in any distillery, it shall not be lawful to remove any wash from any other fermenting back in such distillery, until the whole contents of such first-mentioned back shall have been taken a separate account of by the proper officer in the wash-charger, and conveyed into the wash-still or stills; and if any wash shall be removed contrary hereto, the distiller in whose distillery such offence shall be committed, shall forfeit the sum of 200*l.* Penalty on removing wash till the whole contents of one back shall be conveyed to the still, 200*l.*

§ 64. Four hours at least before any low wines or feints or spirits respectively shall be removed out of any of the respective receivers of low wines or feints or spirits in the distillery of any distiller, a notice in writing, specifying the day and hour when such low wines *or feints or spirits respectively* are to be removed out Notices to be given for removing low wines, feints, or spirits from receivers.

5 G. 4. c. 80.

of such receivers respectively, shall be given to the proper officer, by or in behalf of any such distiller; and such officer shall attend at the time specified in such notice, and after having taken an account of the quantity and strength of such low wines or feints or spirits respectively, as the case may be, such officer shall remove the fastenings of the pumps, or other conveyances used for the removal or conveyance of low wines or feints or spirits, and of the receivers containing such low wines or feints or spirits respectively, and forthwith and without delay all the low wines or feints which shall be in such low wines' or feints' receiver or receivers respectively shall be removed and conveyed into the low wines' or feints' charger or chargers; and all the spirits which shall be contained in such spirit-receiver shall be removed and conveyed into the entered spirit storehouse of such distiller; and if any low wines or feints or spirits respectively shall not be removed and conveyed as aforesaid, or shall be removed from any such receiver without such notice, or at any other time than shall have been specified in such notice, or before the officer shall have removed the several fastenings, as herein directed; or if, after such officer shall have taken an account of the quantity and strength of the low wines or feints or spirits respectively in any such receiver, any other low wines or feints or spirits shall be conveyed into any such receiver, until the whole of the low wines or feints or spirits of which such account shall have been taken, shall have been removed or conveyed from any such receiver, and the fastenings thereof shall have been again secured by such officer, then in each and every such case the distiller, in whose distillery such offence shall be committed, shall forfeit the sum of 200*l.*

Penalty for removing spirits without notice, &c. 200*l.*

§ 65. All the low wines produced by the distillation of the wash contained in each fermenting back in the distillery of any distiller, shall be collected and kept in the low wines' receiver or receivers separate and apart from and unmixed with any low wines produced by the distillation of any wash contained in any other

Low wines, spirits, and feints produced from the wash in each back, to be kept sepa-



ficer, or if all such low wines shall not be removed from the receiver or receivers, as herein directed, or if all the spirits and feints respectively produced by the re-distillation of such low wines, of which such account shall have been taken, shall not be so collected and kept separate as aforesaid (except as herein provided), until an account of the strength and quantity of such spirits and feints respectively shall have been taken by such officer as aforesaid, then and in every such case every such distiller shall forfeit the sum of 200*l.*: Provided, that it shall and may be lawful to mix with any such feints so collected in such receiver or receivers, or with the low wines from which such feints are produced, any feints (if any) which shall have been produced by and which may remain on hand after the re-distillation of the last charge of the low wines' still with the feints produced from the low wines of the preceding back of wash: Provided also, that nothing herein contained shall extend to prevent any distiller in whose distillery any feints shall have been collected, and an account thereof taken as aforesaid, from re-distilling, under the provisions of this act, the whole of such feints, and in like manner to re-distil the whole of any feints produced by such re-distillation; and also, in like manner, to repeat the process of re-distilling the whole of any feints produced by any such re-distillation, so often as it shall appear expedient to such distiller so to do: Provided nevertheless, that it shall be lawful for any officer of excise, and such officer is hereby authorised to take an account of the spirits and feints respectively produced and collected as aforesaid, on each and every such re-distillation as aforesaid, and to compute and ascertain the quantity of proof-spirits in and equivalent to such spirits and feints respectively, according to the strength of such spirits and feints respectively; and such distiller shall be chargeable and charged with duty, under the provisions of this act, for the greatest quantity of proof-spirits which shall appear to have been produced, or deemed to have been produced, under the provisions of this act, from the whole of the low wines which shall have been collected and taken an account of, as before mentioned, whether such greater quantity of proof-spirits shall appear from the first re-distillation of such low wines, or from any such subsequent re-distillation as aforesaid.

6 G. 4. c. 80.

May re-distil feints.

Officer to take an account of the spirits and feints produced on such re-distillation.

§ 66. For and in respect of every 100 gallons of wort or wash which shall be brewed or made in the distillery of any distiller, the officer of excise shall charge such distiller with duty for a quantity of spirits at the rate of one gallon of proof-spirits for every five degrees of gravity of such wort or wash which shall be attenuated; that is to say, for every five degrees of difference between the highest gravity of such wort or wash, as declared by such distiller pursuant to this act, or as appearing on any account taken thereof by the officer in any fermenting back or backs, and the lowest decreased gravity of such wort or wash, as appearing on any account thereof taken by the officer previous to the distillation of such wort or wash; and the officer shall also charge at the same rate and proportion of spirits for any lesser quantity of such wort or wash, and for any less decrease of gravity than five degrees.

Modes of charging duty:

1st, by per centage from wash, according to the attenuation of the gravity thereof, one gallon for every five degrees attenuated.

§ 67. When any officer of excise shall take an account of the quantity *and strength of the low wines* which shall have been

2d, By the produce as found in the low wines.

5 G.4. c.80.

produced from the distillation of the wash contained in any fermenting back in the distillery of any distiller, such officer shall compute and ascertain the quantity of proof-spirits in and equivalent to such low wines, according to the strength and quantity of such low wines; and such quantity of proof-spirits shall be deemed and taken to have been distilled or produced from the wash contained in such back, and duty shall be payable, and the officer shall charge the distiller with duty, on the quantity of proof-spirits so ascertained, after making an allowance of 2 *per centum* on such quantity.

3d, By the produce on the re-distillation of low wines into spirits and feints.

§ 68. Whenever any officer of excise shall take an account of the quantity and strength of spirits and feints respectively, which shall have been produced from the whole of the low wines distilled from the wash contained in any fermenting back, together with any feints which may have remained from any previous re-distillation in the distillery of any distiller, such officer shall compute and ascertain the quantity of proof-spirits in and equivalent to such spirits and feints respectively, according to the strength of such spirits and feints respectively, and shall deduct from the quantity of proof-spirits so ascertained a quantity of proof-spirits, computed and ascertained as aforesaid, equivalent to the quantity of feints (if any) which may have remained on hand after any such previous re-distillation, and which may have been included in the account of spirits and feints so taken as aforesaid; and after such deduction, the remaining quantity of proof-spirits so computed and ascertained, shall be deemed and taken to have been distilled and produced from the low wines distilled from the wash contained in such fermenting back, and duty shall be payable, and the officer shall charge the distiller with duty upon such last-mentioned quantity of proof-spirits.

Wash to be charged from highest gauge, without allow-

§ 69. Every distiller shall, in respect of all wort, wash, and [illegible] in the distillery of such distiller, be chargeable, and charged according to the highest gauge of quantity which shall at any time be taken thereof, and according to the highest amount of gravity

with all such mixtures, shall be forfeited, and may be seized by any officer of excise. 6 G. 4. c. 80.

§ 71. Whenever the quantity of spirits which shall be actually distilled or produced, or which, under any of the provisions of this act, shall be deemed to be distilled or produced from any wort or wash contained in any fermenting back, shall exceed the rate or proportion of one gallon and one fifth part of a gallon, of proof spirits from each and every one hundred gallons of such wort or wash, for and in respect of every five degrees of gravity of such wort or wash which shall have been attenuated, as taken by the officer; that is to say, for every five degrees of difference between the highest gravity of the wort from which such wash was produced, as declared by such distiller, pursuant to this act, or as appearing on any account taken thereof by the officer, and the lowest decreased gravity of such wort or wash, as taken by the officer previous to the distillation thereof, then and in every such case the officer shall keep a distinct account of every such excess quantity, and shall set forth the same in his book or books, and in his return or charge against such distiller, under the head of "Undue excesses;" and in case the quantity of spirits charged upon any distiller during the continuance of the licence of such distiller, exclusive of such undue excesses as aforesaid, shall be less in respect of every one hundred gallons of wort or wash distilled or decreased in the distillery of such distiller, than after the rate or in the proportion of one gallon of proof spirits for every five degrees of the gravity of the wort when made from malt, or corn or grain, or any mixture thereof, or from potatoes, or any mixture thereof, or than after the rate or proportion of one gallon of proof spirits for every four degrees of the gravity of the wort when made from sugar, or any mixture thereof, which shall have been specified in any notice which shall have been delivered by any such distiller pursuant to this act; then and in every such case such distiller shall be chargeable with the quantity of spirits after the proportion aforesaid respectively which shall appear so deficient, and the officer shall, within one month after the expiration of such licence, make a return, and shall charge such distiller with duty on the quantity of spirits which shall appear so deficient, and such distiller shall pay such duty within ten days next after such return shall be made, or ought to have been made, or shall for default forfeit 20*l.*, together with a sum equal to double the amount of such duty.

If the produce of spirits from wash shall exceed the proportions herein mentioned as to the gravity of wort, &c. duty shall be charged accordingly.

§ 72. The proper officer of excise shall, from time to time, make out and deliver to the collector of excise, or to such person or persons as the commissioners of excise shall appoint to receive the same, a return of the quantity of spirits for which such distiller shall, from time to time, be chargeable with duty, and of the duty payable thereon under this act; and any such officer shall and may make out and deliver any such return or account from time to time, and at any time, and for any period, as shall be directed by the commissioners of excise; and every such officer is hereby required, in every such return, to charge such distiller, and such officer shall charge such distiller according to such of the several modes of charging prescribed by this act, as shall produce the *highest* amount of duty; and such *officer shall, if required in writing* by such distiller, deliver or

Officer shall make a return on the distiller for the quantity of spirits chargeable, who shall pay the duty accordingly, on penalty of 20*l.* with a sum equal to double the duty

6 G.4. c.80.

leave with every such distiller, or at such distillery, an account in writing, signed with his name, setting forth the quantity of spirits specified in such return, with the amount of duty thereon, and the period comprised in such return; and the return of such officer shall be a charge on every such distiller, and such distiller shall pay the duty appearing by such return, or which shall be chargeable upon and have become due and payable from such distiller, within such time and times, and in such manner as shall from time to time be directed by the commissioners of excise for that purpose, or shall for every default forfeit 20*l*., together with a sum equal to double the amount of such duty.

Every distiller, &c. to make entry at the end of every distilling period, by declaring the true quantity of wash distilled, and spirits made in each brewing and distilling period, and once a quarter the quantity of malt used, on penalty of 200*l*.

§ 73. At the end of every distilling period, every distiller shall, under the proper hand of such distiller, or under the hand of one of such distillers, if more than one in partnership, make a true and particular entry or return in writing to the proper supervisor of the district, of the whole quantity of the wort or wash which shall have been decreased from the wash-backs, or distilled in the distillery of such distiller into low wines or spirits, and of the whole quantity of spirits computed at the strength of proof-spirits, which shall have been made or distilled in the distillery of such distiller within the preceding brewing and distilling period, and of the whole quantity of feints remaining undistilled; and shall, at the end of every quarter of a year, if demanded by the commissioners of excise, make a return, in such manner as aforesaid, to the commissioners of excise, of the whole quantity of malt used by such distiller in the preceding quarter; and in case of omission, neglect, or default in the making of such respective entry or return, or if any false entry or return shall be made, every such distiller shall, for every such omission, neglect, or default, and for any such false entry, forfeit the sum of 290*l*.

Distiller not to travel for making such re-

§ 74. Provided, that no distiller shall be compelled to travel for the making of the said entries or returns, or for the payment o

ighing, measuring, and taking an account of the spirits and 6 G.4. c.80.
, and other vessels and packages used or fit for conveying
emoving spirits, which shall at any time be in the possession
ch distiller, rectifier or compounder, or dealer; and if any
distiller, rectifier or compounder, or dealer, shall not keep
naintain such scales, and weights and measure, or either of
, or shall not permit or suffer any officer or officers of excise
e the same as aforesaid; or if any such distiller, rectifier or
ounder, or dealer, shall, in the weighing or measuring of any
spirits, casks, vessels, or other packages, use or cause, or
re or suffer to be used, any false, unjust, or insufficient scales
ights or measures, or shall practise any art, device, or con-
ce, by which any such officer or officers may be hindered or
nted from taking the just and true weight and measure of
uch spirits, casks, vessels, or other packages, then and in
such case, such distiller, rectifier or compounder, or dealer,
for each and every such offence, forfeit the sum of 100*l.*;
ll such false, unjust, or insufficient scales, and weights and
ures respectively, shall likewise be forfeited and lost, and shall
ay be seized by any officer or officers of excise.

spirits, and officers permitted to use them; and no art to be used to deceive in weighing.

Penalty, 100*l.*

7. All and every such distiller, rectifier or compounder of, aler in or retailer of spirits, shall, when and so often as he, or they shall be thereunto required by any officer or officers cise, and with a sufficient number of his, her, or their servants, nd assist, to the utmost of his, her, or their power, such r or officers, in weighing, measuring, and taking an account spirits and casks, vessels, and other packages, for keeping, ying, or removing spirits in the possession of him, her, or , on pain of forfeiting, for every neglect or refusal thereof, am of 50*l.*

Assistance to be given the officer in taking account.

Penalty, 50*l.*

8. It shall be lawful for any officer of excise, from time to and whenever and as often as such officer shall deem expe- so to do, to take any sample or samples of any wort, wash, rines, feints, and spirits respectively, in any back, receiver, er, or other vessel or utensil, in the distillery of any distiller, ler that such officer may ascertain the gravity or strength of worts, wash, low wines, feints and spirits respectively, and such part of any such back, receiver, charger, or other vessel ensil, as the officer shall think proper; and the gravity or gth of any such sample so taken shall be and be held to be rue or correct gravity or strength of the whole contents of ack, receiver, charger, or other vessel or utensil, from which uch sample shall be so taken: Provided always, that before uch sample shall be so taken, all the liquor contained in any back, receiver, charger, or other vessel or utensil, may be d and mixed up and mixed together by such distiller, or person in the employ of such distiller, if they shall think to do.

Officer may take samples of wort, wash, spirits, &c. in any distillery.

Such samples shall be deemed true samples.

9. The proper officer of excise shall, as often and at such and times as he shall think fit, take and shall keep an account ay of debtor and creditor, of the stock or spirits in the distillery ery distiller, and shall, in such account, credit such stock with ull quantity of spirits, computed at hydrometer proof, which be from time to time duly conveyed, pursuant to this act, uch *stock, from the spirit-receiver* in such distillery, and shall

Distiller's stock account of proof-spirits to be kept by officer.

: G.4. c.80. debit such stock with the full quantity of spirits, computed at hydrometer proof, which shall be from time to time sent out of such stock under legal permit; and if at any time the quantity of such spirits which shall be found in the stock or possession of any such distiller shall be greater than the quantity of spirits which by the stock account, so kept by such officer, ought to be in the stock or possession of such distiller, all such excess quantity of spirits shall be forfeited, and may be seized by any officer of excise, and every such distiller shall forfeit the sum of 20*s.* for each and every gallon of such excess quantity of spirits; and if at any time the quantity of spirits in the stock or possession of any distiller shall be less than the quantity of spirits which by the stock account, kept by such officer, ought to be in the stock or possession of such distiller, every such distiller shall forfeit the sum of 20*s.* for every gallon of spirits which shall be so deficient: Provided always, that no distiller shall be liable to such last-mentioned penalty in any case where such decrease shall not exceed two gallons of proof-spirits *per centum* on the quantity of spirits formed by the balance left on the last stocking, and the quantity since duly brought into stock from the spirit-receiver, if such last stocking be no further distant than seven days, or three gallons of proof-spirits *per centum* as aforesaid if more than seven days; and such distiller shall prove, to the satisfaction of the supervisor, that such decrease did not result from any fraud practised or intended.

Penalty for increase or decrease in such stock, forfeiture of spirits, and 20*s.* for every gallon of excess.

Limitation as to excess.

§ 80. The several licences, entries, notices, declarations, books, accounts, and returns, required or directed by this act, shall and may be in such respective form or forms as the commissioners of excise may from time to time direct; and it shall not be necessary to prove, on the trial of any complaint or information, or on any other proceeding for any offence against this act, the particular order or direction of the said commissioners of the treasury, or commissioners of excise in that behalf.

The licences, entries, notices, declarations, &c. may be in such form as the commissioners of excise shall direct.

§ 81. No spirits shall be sent out of or removed from the distillery or stock of any distiller, at any other strength than twenty-five

No spirits to be removed from

and called feints; and that all other spirits produced by re-distillation, and which shall not have had any flavour communicated thereto, and all liquors whatsoever which shall be mixed or mingled with any such spirits, shall be deemed and called plain *British* spirits; and that all other spirits produced by re-distillation, and which shall have had any flavour communicated thereto, and all liquors whatsoever which shall be mixed or mingled with any such spirits, shall be deemed a *British* compound called *British* brandy; and that all other spirits produced by re-distillation, and which shall have been distilled or mixed with juniper-berries, carraway-seeds, anniseeds, or any other seeds, preparation, or ingredient whatsoever, used in the compounding of spirits, and all liquors whatsoever which shall be mixed or mingled with any such spirits, shall be deemed and called *British* compounds; and that all *British* spirits of the strength of forty-three *per cent.* above proof, as denoted by the hydrometer called *Sike's* hydrometer, and all spirits of a greater or higher degree of strength, shall be deemed and called spirits of wine; and if any question shall arise, whether any spirits removed by any permit are *bonâ fide* such *British* spirits, plain *British* spirits, or *British* compounds of any particular sort or kind, or spirits of wine respectively, as are described and specified in the permit accompanying the same, or granted for the removal thereof, although such spirits shall appear to have been kept account of in the officers' books, or account of stock from which such spirits were removed, by the same name or description as is specified in such permit, the proof that such spirits are really and *bonâ fide* of the sort specified in such permit shall lie upon the owner or claimer thereof, who shall prove the same by the oaths of two credible witnesses, being skilful and experienced persons, competent to decide by examination thereof.

6 G. 4. c. 80.

Proof of spirits removed being such as described in the permit to lie upon the owners.

§ 102. If any rectifier or compounder of spirits shall have in his, her, or their custody or possession any wort, wash, or other fermented liquor, or materials prepared or fit for the purpose, or capable of being distilled into low wines or spirits, or shall distil or extract any low wines or spirits from wort, wash, or other fermented liquors or materials, not being *British* spirits, or colonial spirits, lawfully received into stock to be rectified or compounded; or shall have in his custody or possession any spirits whatsoever, without having received and delivered to the proper officer a legal permit with and for the same; or any foreign or colonial spirits, except colonial spirits for the purpose of being rectified or compounded, and sold by such rectifier or compounder as and for spirits of wine or compounded spirits, every such rectifier or compounder of spirits shall (over and beside all other penalties and forfeitures) forfeit and lose for every such offence the sum of 500*l.*, or the sum of 20*s.* for each and every gallon of such wort, wash, or other fermented liquor, or materials prepared or fit for the purpose, or capable of being distilled into low wines or spirits, or of the low wines or spirits so distilled as aforesaid, or of the spirits received without being accompanied with a true and legal permit, delivered to the proper officer as aforesaid, or of the foreign or colonial spirits, except as aforesaid, as the case may be, at the election of the commissioners of excise, or of the person who shall sue or prosecute for such *penalty; and the licence* of every rectifier or com-

Penalty on rectifiers, &c. having in their custody any wort, &c. or distilling the same into low wines or spirits, or receiving spirits without a legal permit, 500*l.* &c.

under of spirits, who shall be a second time convicted of any of
e offences aforesaid, shall upon such second conviction be deemed
bid to all intents and purposes; and such rectifier or compounder
hall not be capable of receiving any further or renewed licence as
rectifier or compounder of spirits for the period of three years
from the date of such second conviction.

§ 103. No person or persons shall be deemed a rectifier or com-
pounder of spirits, within the meaning of this act, who shall not
have at least one entered still capable of containing in the body
of thereof, exclusive of the head, 120 gallons at the least, nor unless
such still shall have a suitable worm and worm-tub affixed thereto,
no and shall be really and *bonâ fide* used for the rectifying or making
ry of *British* compounds for sale by such person or persons; and any
ess person who shall carry on the business of a rectifier or com-
r, pounder of spirits, contrary to the directions of this act, shall be
ry subject and liable to, and shall incur all the penalties and for-
feitures by this act inflicted on persons using or working any un-
licensed still.

§ 104. No rectifier or compounder of spirits shall have or keep
any opening, fixed pipe, or other conveyance whatever, leading to
any still or stills belonging to or used by such rectifier or com-
pounder, other than and except one charging pipe to each such
still; nor shall have or keep any opening, fixed pipe, or other con-
veyance whatever, leading from any such still or stills, save an
except the discharge-cock to each still respectively belonging, an
the head of such still terminating in the worm; and proper lock
and fastenings shall be provided and maintained by the proper s
pervisor of the district, at the expense and charge of every suc
rectifier or compounder, for properly and sufficiently locking an
securing the charge and discharge cock of each and every
respectively used by such rectifier or compounder, which loc
and fastenings shall be locked and sealed by the proper officer
and shall be and remain always so locked and sealed wh
work; and if any such rectifier or compounder s
opening, fixed pipe, or other conveya
or leading from such still or s
ch locks and fast
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s or
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ngs for se-
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arge and dis-
arge cocks, or
pening or
breaking locks
or fastenings,
all forfeit

the same respectively within such sixteen hours, such rectifier or compounder shall forfeit and lose the sum of 100*l.* 6 G. 4. c. 80.

§ 106. Every such rectifier or compounder of spirits shall take off, or cause to be taken off, the head or heads of any still or stills, except any still or stills whose head is soldered or permanently fixed to the body of such still, when and so soon as any such still or stills shall have ceased to be worked; and the head or heads of such still or stills shall in no case, nor on any pretence, or on any account, be put on such still or stills, until each such still shall be again charged and ready to work, nor shall any still be again worked by any rectifier or compounder until the officer shall have examined the quality of the spirits then in each such still; and if any such rectifier or compounder shall neglect to take off each and every head from each respective still, except as aforesaid, within twelve hours after each such still shall have ceased to be worked, or shall in any case, or on any pretence or account whatsoever, put on any such head or heads on any still or stills before such still or stills shall be charged and ready to work, or shall work any still or stills before the officer shall have examined the quality of the spirits then in such still or stills, every such rectifier and compounder, so offending, shall for each and every such offence forfeit and lose the sum of 100*l.* Rectifiers or compounders shall cause the heads of their stills to be taken off so soon as the same shall cease to be worked, &c. on penalty of 100*l.*

§ 107. And for the more effectually preventing the receiving or buying by any person whomsoever of spirits from persons privately distilling, or unlawfully importing or landing the same; it is enacted, that if any rectifier or compounder of, or any dealer in or retailer of spirits, or any other person whomsoever in any part of *England*, shall receive or buy, or shall procure or employ any person to receive or buy any spirits from any person or persons whomsoever, except from some licensed distiller, rectifier, or compounder of spirits, whose name shall be painted over the outward door of his stillhouse, storehouse, warehouse, shop, cellar, vault, or other place, in manner required and directed by this act, or from some licensed dealer in or retailer of spirits, or at some public sale of spirits condemned and sold under the direction of the commissioners of excise or customs, every such person so offending shall for every such offence forfeit and lose the sum of 500*l.*: Provided that nothing herein contained shall extend, or be construed to extend, to make any person or persons liable to the aforesaid penalty of 500*l.*, for or by reason of the receipt or purchase of any foreign or colonial spirits, or *British* spirits, brought into *England* from *Scotland* or *Ireland*, under the provisions of this act, whilst the same shall be lying openly on the lawful quays on which such spirits respectively shall have been first landed upon the importation thereof, or removal thereof from *Scotland* or *Ireland*, or in any warehouse or warehouses in which such foreign or colonial spirits shall be or may have been deposited by such seller according to law; every such seller of *British* spirits imported into *England* from *Scotland* and *Ireland* respectively, being at that time duly licensed under this act as a dealer in spirits. Any rectifier or compounder, or dealer or retailer, or other person receiving or buying spirits from any but licensed distillers or rectifiers, or compounders of or dealers in or retailers of spirits, or at the public sales of condemned spirits, shall forfeit 500*l.*; but this penalty not to extend to the purchase of spirits whilst on the quays or in the warehouses in which lodged on importation.

§ 108. It shall be lawful to and for all and every the officers of excise, from time to time and at all times, by day or by night, upon his or their request, but if in the night in the presence of a constable or other officer of the peace, to enter into all and every the *houses, warehouses, storehouses*, rooms, shops, cellars, Officers may enter all places used by rectifier or compounder, or dealer in or retailer of spi-

vaults, and other places, made use of by any rectifier or compounder of, or dealer or dealers in, or retailer or retailers of spirits, for the laying or keeping of any spirits; and by tasting, weighing, gauging, or otherwise, to take an account of the quantity and quality and strength respectively, of all or any such spirits which shall at any time be in his, her, or their custody or possession, and to take at any time or times a sample or samples of any such commodities, paying for the same the usual price thereof, if demanded.

§ 109. Every officer of excise shall, as often and at such times as he may think fit, take an accurate and true account of the quantity and strength of all spirits in the stock, custody, or possession of all and every rectifier or compounder of, or dealer in spirits, and shall compute the same at the strength of hydrometer proof; and if, after making allowance for the spirits for which permits shall have been granted since the last account taken of the stock of such rectifier or compounder or dealer, computing the same at the strength aforesaid, it shall be found that the quantity of spirits remaining in the stock, custody, or possession of such rectifier or compounder, or dealer, shall exceed the quantity for which such rectifier or compounder, or dealer, shall have credit in the books of the proper officer, whether such credit shall have arisen from what was on hand at the last preceding account taken or from what may have been lawfully received subsequent thereto such excess shall be deemed and taken to be spirits illegally received, and a quantity of spirits of the like kind, equal to such excess, shall and may be seized out of any part of the stock of such rectifier or compounder, or dealer, by any officer or officers of excise; and the rectifier or compounder, or dealer, in whose stock, custody, or possession such excess shall be found, shall forfeit and lose the sum of 20*s.* *per* gallon for every gallon of such excess; and if there be any decrease in such stock, not duly accounted for, by spirits sent out with permit, and exceeding five *per centum* [illegible] or stock left on hand at the last preceding account, [illegible] lawfully received, the rectifier *or* [illegible] decrease is found,

thereof; and every such rectifier or compounder, or dealer or retailer as aforesaid, shall, on the receipt of any spirits, give notice thereof to the proper officer of excise, and shall deliver to such officer the permit received by them with such spirits, whereupon such officer shall attend and take an account of the strength and quantity of such spirits; and if any such rectifier or compounder, dealer or retailer, who shall receive any such spirits as aforesaid, into his, her, or their custody or possession, shall fail to give such notice and deliver such permit as aforesaid, or shall break bulk, or draw off any part of such spirits, or add water or any thing thereto, or in any respect alter the same, or tap or open any of the casks, or alter or change any of the packages containing any such spirits, or the spirits therein removed, until the proper officer or officers of excise shall have taken an account of the strength and quantity thereof, all such spirits, or a quantity equal thereto, shall be forfeited, and shall and may be seized out of any part of the stock of such rectifier or compounder, dealer or retailer, by any officer or officers of excise; and every such rectifier or compounder, dealer or retailer, so offending, shall for every such offence forfeit and lose the sum of 200*l.*: Provided always, that in case the proper officer of excise shall neglect to attend, for the purpose of taking such account as aforesaid, within two hours after receiving such notice, no forfeiture or penalty shall be incurred for any such offence.

6 G.4. c.80.

strength and quantity.

Penalty on default, forfeiture of the spirits and 200*l.*

§ 112. In all cases where the strength of any part of the stock of any rectifier or compounder of spirits, or any dealer in or retailer of spirits, by being mixed or compounded with any sugar, syrup, seeds, fruit, or any other ingredients or materials, cannot be easily ascertained by the hydrometer, every such rectifier or compounder, dealer and retailer, shall immediately, or on being required by an officer or officers of excise, cause the true quantity and degree of strength of such spirits so mixed to be legibly marked on the outside of the cask or casks, or vessel or vessels containing the same respectively; and if the strength of such spirits shall be found to have been untruly marked by such rectifier or compounder, dealer or retailer, on the outside of such cask or casks, or vessel or vessels; or if such rectifier or compounder, dealer or retailer shall, upon being required by the officer or officers of excise as aforesaid, neglect immediately to mark the quantity and degree of strength of such spirits as aforesaid, or not continue such mark until all the spirits in such cask or vessel shall be removed and taken therefrom, such spirits, syrup, seeds, fruit, and other ingredients, together with the casks and vessels containing the same, shall be forfeited, and shall and may be seized by any officer or officers of excise, and every such rectifier or compounder, dealer or retailer, shall also for each and every such offence forfeit and lose the sum of 50*l.*: Provided always, that no such penalty shall be incurred by any dealer or retailer who shall mark on any such cask of compounds as the strength of the spirits therein contained, the strength expressed in the permit with which the same were received by such dealer or retailer into stock, no alteration having been since made therein.

Rectifiers or compounders, dealers and retailers, not marking the quantity and strength of mixed or compounded spirits on casks, or marking them untruly, to forfeit the same and 50*l.*

§ 113. It shall be lawful for any rectifier or compounder of spirits to sell and send out, accompanied with a true and lawful permit, to any *person or persons*, any quantity, not being less than

Rectifiers, &c. may send out compounded

6 G.4. c.80.

spirits at any strength, not exceeding 17 per centum under proof, and also spirits of wine, and not in any less quantity than two gallons, but no other spirits.

two gallons of compounded spirits at any strength not exceeding 17 *per centum* under hydrometer proof; and to any person any quantity not being less than two gallons of spirits of wine; and that if any plain *British* or colonial spirits, not being spirits of wine, or if any other spirits, not being compounded spirits, or if any compounded spirits, except by permit, and of such strength as aforesaid, and not being less than two gallons at any one time shall be sold or sent out by any rectifier or compounder of spirits, contrary to this act, all such spirits, with the casks or other packages containing the same, and all horses, cattle, carriages and boats made use of in removing such spirits, shall be forfeited, and may be seized by any officer or officers of excise.

Strength of spirits of wine 43 per centum over proof at the least, and to be permitted and stocked accordingly, and kept separate.

§ 114. All spirits of wine shall be made and kept of the strength of 43 *per centum* over hydrometer proof at the least; and the actual and true strength of all spirits of wine shall be expressed and specified in the request-note for a permit, and in the permit granted for or to accompany the removal thereof, and shall be taken account of by the officer in the respective stocks of every rectifier or compounder of and dealer in and retailer of spirits respectively, according to the actual strength thereof; and that every dealer in and retailer of spirits shall keep all spirits of wine in a separate and distinct cellar or place entered for that purpose, in which no other spirits or foreign wine or sweets is, are, or shall be kept; and if any spirits of wine shall, from and after the 5th day of *January*, 1826, be kept or removed, of less strength than as aforesaid, or be mixed or mingled with any foreign wine, foreign or colonial spirits, or *British* spirits, or by any means be by such dealer or retailer reduced lower or weakened in the strength thereof, or shall be removed without a permit, when required by law, expressing the strength thereof, or shall be found in or upon the premises, or in the custody or possession of any such dealer or retailer as aforesaid, otherwise than in such separate entered cellar or place as aforesaid, all such spirits of wine, and

Penalty of 200*l.* and forfeiture of spirits.

[redacted]

and specified in every such permit, within which such permit is to be in force, and no permit shall be valid or of any effect, if the same shall be granted, or any request-note not made conformably to the directions of this act; and all such spirits which shall be sent out, removed or carried, or found removing or carrying, without such permit as aforesaid, together with the casks, vessels, and other packages containing the same, and also the boats and other vessels, and the horses and other cattle and carriages made use of in the removal or conveyance thereof, shall and may be seized by any officer or officers of excise; and if any distiller, rectifier or compounder, or dealer, shall send out, deliver, or carry, or knowingly permit or suffer to be sent out, delivered, or carried, any spirits whatsoever, from or out of the stock, custody, or possession of such distiller, rectifier, or compounder, or dealer respectively, or from or out of any house, building, or other place wherein such spirits were made, manufactured, rectified, compounded, or kept by any such distiller, rectifier, or compounder of or dealer in spirits, without such permit as aforesaid, or with any permit not corresponding to such spirits in quantity, quality, sort or kind, and strength, every such distiller, rectifier, or compounder, or dealer, shall, over and above the forfeiture of the said spirits, if seized, forfeit and lose the sum of 20*s.* for every gallon of the spirits so sent out, carried, or conveyed, of whatever strength the same may be, and whether the said spirits shall or shall not be seized: Provided always, that no such permit shall be granted to a distiller for any smaller quantity of spirits than 80 gallons contained in one cask, or to any rectifier or compounder of or dealer in spirits, for any smaller quantity than two gallons. 6 G.4. c.80.

§ 116. If any retailer of spirits, or other person, licensed or not licensed, shall sell or send out, deliver, or remove, or shall knowingly suffer to be sent out of, delivered, or removed from his or her stock, custody, or possession, any spirits exceeding one gallon, without the same being accompanied by a true and lawful permit, to be requested and granted as aforesaid; or if any rectifier or compounder of, or dealer in, or retailer of spirits, shall receive or knowingly suffer to be received into his or her stock, custody, or possession, or shall suffer any other person, for his or her use or account, to receive any spirits, without the same being accompanied with a true and lawful permit, so granted as aforesaid; or if any carrier, boatman, or other person shall knowingly carry, remove, or transport, or by means of his horse, cattle, cart, vessel, boat, or other conveyance, shall knowingly suffer to be carried, removed, or transported, or shall be aiding or assisting in carrying, removing, or transporting, from any part of *England* to another part thereof, any spirits which by law ought and is required to be accompanied with a permit, without being accompanied with such true and lawful permit, granted as aforesaid in that behalf, every such rectifier or compounder, dealer, retailer, carrier, boatman, or other person whomsoever, shall, for each and every such offence, forfeit and lose the sum of 200*l.* over and above every other penalty and forfeiture to which he or she is or may be liable by virtue of this act; and all such spirits, and the package and packages in which the same shall be contained, and every such horse, cart, vessel, boat, and other conveyance, and all such cattle, shall

No retailer or other person shall send out or receive any spirits exceeding one gallon, without permit, nor shall any person carry the same, on pain of forfeiting 200*l.*

6 G.4. c.80.

be forfeited, and shall and may be seized by any officer or officers of excise.

No spirits to be sent out or received into stock, unless the permit shall truly express the strength, on pain of forfeiture, and penalty of 100*l*.

§ 117. No distiller, rectifier or compounder of, or dealer in or retailer of spirits, shall send out or remove from his, her, or their stock, custody, or possession, nor shall any rectifier or compounder of, or dealer in or retailer of spirits, or other person, receive into his, her, or their stock, custody, or possesion any spirits, unless the permit or permits accompanying such spirits shall truly express the sort or kind thereof, and the strength of all such spirits at the time of the removal thereof; and all such spirits so removed, sent out, or received, not being accompanied with a true and lawful permit or permits, where a permit is by law required, expressing the sort or kind, and the strength thereof, shall be forfeited, and may be seized by any officer or officers of excise; and every such distiller, rectifier or compounder, dealer or retailer, so sending out, and every such rectifier or compounder, dealer, retailer, or other person so receiving such spirits, shall, for each and every such offence, forfeit and lose the sum of 100*l*.; and no rectifier or compounder of or dealer in spirits shall have (except as after mentioned) credit in stock for any greater quantity of spirits received or found in his or her stock than for the quantity, computed at proof, brought in by such permit or permits as aforesaid, delivered to the officer; nor shall any retailer of spirits have credit in stock for any greater quantity of spirits received into his or her stock, except as after mentioned, than for the bulk or quantity of spirits in gallons brought in and expressed by such permit or permits as aforesaid, accompanying such spirits, and delivered to the officer.

Rectifiers, &c. to have credit for the quantity expressed in permits, computed at proof.

Retailers to have credit in stock, according to the gallons or bulk.

Officers of excise authorised to stop any person found removing or carrying spirits, and examine

§ 118. It shall be lawful for any officer or officers of excise to stop and detain any person or persons who shall be found removing or carrying any spirits of any kind from the stock of any distiller, rectifier or compounder, or dealer in or retailer of spirits, or from the stock of any person or persons whomsoever, and to demand the production of the permit or permits accompanying such spirits, and on being satisfied that the spirits are the same in



and shall have full power and authority to hear and determine forthwith any information against any such person or persons so stopped or arrested under the provisions of this act, and on the confessions of any such person or persons, or upon proof on oath by one or more credible witness or witnesses, to convict such person or persons in such penalty respectively as aforesaid; and no such penalty shall be mitigated by any justice or justices below one fourth part thereof; and every such person so convicted as aforesaid, shall immediately on such conviction pay down into the hands of such officer the said penalty in which he or they shall be so convicted; and if any such person or persons so convicted shall not forthwith pay down the said penalty, the said justice or justices shall, and he and they is and are hereby respectively authorised and required, by warrant under his or their hand and seal, to commit the person so convicted as aforesaid to any gaol or prison of the county, there to be kept to hard labour for the space of not exceeding six nor less than three calendar months, unless such penalty be sooner paid.

6 G.4. c.80.

Restriction as to mitigation of penalty.

§ 119. If any permit granted for spirits shall not be sent and delivered with such spirits unto the buyer thereof, such spirits shall, if the same be not seized in the transit for want of a lawful permit accompanying the same, be forfeited to the buyer thereof, and the seller shall be rendered incapable of recovering the same, or the value or price thereof, in any court of law or equity; and also, that the seller in such case shall, over and besides the loss of the said spirits, forfeit and lose double the value of or price agreed to be paid for the same, including the duties; and that the evidence of the buyer or person receiving the said spirits shall, on any trial as to such spirits, be admitted to prove that the same were delivered without a lawful permit.

If permit for spirits not delivered with the goods, they shall be forfeited to the buyer, and double the price, &c.

§ 120. Every permit which shall be granted for the removal of any spirits under any of the provisions of this act shall be granted and issued, obtained and used under the rules, regulations, and provisions of any act or acts of parliament in force in *England* for regulating the granting and issuing of permits for the removal or conveyance of exciseable goods, or in any act or acts in any manner relating to such permits (except so far as the same may be expressly altered and otherwise directed by this act); and all and every the clauses, provisions, fines, penalties, and forfeitures inflicted or imposed by the said acts, or any of them, shall extend and shall be construed to extend to, and shall be applied in the execution of this act, and to all and every permit and permits which shall be granted for the removal of any spirits under this act, and to the persons issuing, obtaining, or using the same, as fully and effectually, to all intents and purposes, as if the said clauses, provisions, fines, penalties, and forfeitures were repeated and re-enacted in this act.

Permits for the removal of spirits shall be granted under the regulations of the permit-laws, except as altered and otherwise directed by this act.

§ 121. If any distiller or other person shall deliver, remove, or receive any spirits, for the removal of which a permit is by law required, without such permit, or any greater quantity of spirits, or of a different kind or quality, or of a greater or higher strength than shall be expressed in such permit, or having obtained such permit, shall not send out therewith the spirits therein described, or return the said permit to the proper officer of excise within the time by law *required; or if any* distiller or other person shall

Penalty for frustrating the purpose of a permit obtained for the removal of spirits, 500*l.* and forfeiture of licence.

6 G.4. c.80.

request, obtain, sell, lend, deliver, employ, or make use of any such permit, or shall cause or suffer any such permit to be requested, obtained, sold, lent, delivered, employed, or made use of, to or for any other use or purpose whatsoever, than to accompany the actual removal and delivery of the spirits as therein expressed; or shall produce, or cause or suffer any such permit to be produced to any officer or other person, as having been received with any spirits other than as aforesaid, or shall in any manner use or employ, or cause or suffer to be used or employed any permit, so as that any account of spirits kept or checked, or to be kept or checked by the officer or officers of excise by such permit, shall or may be frustrated or evaded, then and in every such case every such distiller or other person shall for every such offence severally forfeit the sum of 500*l*., over and above all other penalty and penalties, forfeiture and forfeitures whatever; and every permit used for any purpose whatever other than to accompany the removal and delivery of the spirits for which such permit was obtained and granted, and as therein expressed or described, shall be deemed and taken to be a false permit, and such unlawful use thereof shall, over and above all other penalties and forfeitures, subject the person or persons so using the same to all and every the penalties and forfeitures imposed by law upon any person or persons for using, giving, or receiving any false permit; and every person having any licence to make, deal in, retail, or sell spirits, shall, upon being convicted of any such offence as aforesaid, forfeit every such licence, and no new excise-licence shall be granted to such person so convicted, for the remainder of the current year of any licence so forfeited.

No seller of or dealer in spirits to take out more than one permit in one day for the same person, and that only for one cask, except as after excepted, and if more be removed with or without permit, they are forfeited.

§ 127. And the better to prevent the removal of spirits that have been illegally imported, or privately distilled, into the stocks of entered dealers in and retailers of spirits, and of others, it is enacted, that no distiller, rectifier, or compounder of, or dealer in or retailer of spirits shall be allowed to request or take out more than one permit in one and the same day to any one person whomsoever, except as hereinafter is excepted, and such permit shall be granted for the removal of no more than one cask or other package (not being bottles) containing any spirits of one sort or kind; and if any more than one cask or other package (not being bottles) of spirits of one sort or kind, at any one time directed to one and the same person or persons, where there are two or more in joint trade or partnership, except as hereinafter is excepted, shall be found, removed, or carried, or removing or carrying from one place in *England* to any other place therein, whether with or without permit, the same shall be forfeited and lost, and the person selling or sending out such spirits shall forfeit and lose the sum of 100*l*. or 20*s*. *per* gallon, at the election of the commissioners of excise, or person who shall inform or sue for same: Provided always, that nothing herein contained shall be construed to prevent any distiller, rectifier, or compounder of or dealer in or retailer of spirits, from taking out two or more permits, and by virtue thereof sending two or more casks or other packages containing spirits of a different sort or kind, to the same person in the same day, so as each and every such cask or package respectively shall be separately and distinctly described in such permit or permits; and also provided, that nothing herein-

Penalty, 100*l*. &c.

Exception for spirits of different kinds separately described;

also for any number of casks at one time,

before contained shall be construed to prevent the sending with one and the same permit, any number of casks with any kind of spirits therein, each such cask then containing 80 gallons or upwards of spirits. 6 G.4. c.80. each containing 80 gallons or upwards.

§ 128. No retailer of spirits shall be a distiller, rectifier or compounder of spirits, or have any part or share in any distillery or rectifying house, or be in any manner interested or concerned in the trade or business of a distiller, rectifier or compounder of spirits; and if any such retailer shall be a distiller, rectifier or compounder of spirits, or shall have any part or share in any distillery or rectifying house, or be in any manner interested or concerned in the trade or business of a distiller, rectifier, or compounder of spirits, such retailer shall, for every such offence, forfeit and lose the sum of 200*l*. Retailer not to be concerned in any distillery or rectifying house, &c. on penalty of 200*l*.

By stat. 9 *G.* 4. *c.* 44. § 4. All acts in force in *England*, relating to foreign and colonial spirits, &c. are extended to the U. K. 9 G.4. c.44.

(*c*) Concerning Spirits made in England for Exportation, or to be shipped as Stores, or for removal to Scotland or Ireland; or made in Scotland or Ireland for removal to England.

By stat. 6 *G.* 4. *c.* 80. § 82. It shall be lawful for every distiller in *England* to warehouse, for exportation only, or for removal to *Scotland* or *Ireland*, any spirits distilled in the distillery of such distiller, without payment of the duty of excise thereon, according to the provisions of this act, and under and subject to such further rules and regulations as the commissioners of excise shall from time to time direct or order, every such warehouse to be provided and duly entered by such distiller, and to be ceiled and constructed and secured in such manner as shall be approved of by the commissioners of excise or supervisor of the district; and every such warehouse shall have only one door, which door shall open into a public street or road, and have three locks, one of which shall be provided by such distiller, and the key of it kept by such distiller, and the other two of such locks shall be provided by the commissioners of excise, at the expense of such distiller, the key of one of such locks being kept by the supervisor of the district, or other officer directed by the commissioners of excise, and the key of the other of such two locks being kept by the surveying officer of such warehouse: Provided, that it shall not be lawful so to warehouse any spirits of any strength other than the respective strengths of 25 *per centum* above proof, or 11 *per centum* above proof, as denoted by the hydrometer called *Sykes*'s hydrometer; and that all such spirits shall be contained in iron-bound casks of not less than 80 gallons' content each; and that there shall be marked on each end of every cask, in letters or figures legibly cut, branded, or painted thereon, the mark or number of every such cask, the full content thereof in gallons, and the number of gallons, and strength of the spirits contained therein, every such cask being full at the time of the sending of such spirits out of the distillery, for the removal thereof to such warehouse; and if any distiller or distillers, warehousing spirits as aforesaid, shall *neglect or refuse to* provide and keep any such 6 G.4. c.80. Distillers may, under the directions of this act, warehouse spirits without payment of duty, for exportation, or for removal to Scotland or Ireland. Strength of the spirits warehoused to be either 25 or 11 per cent. over proof. The quantity and strength of the spirits to be marked on the cask.

; G.4. c.80.

warehouse well and sufficiently constructed and secured as aforesaid, or to provide and keep such locks and keys, or to pay the supervisor for such two locks and keys as aforesaid, for securing such spirits as aforesaid, or to enter such warehouse for that purpose at the proper office of excise, or shall make use of any warehouse or other place for keeping spirits without being constructed and well and sufficiently secured as aforesaid, or before the same shall have been first duly entered and approved of, according to the directions of this act; or shall remove any spirits to be so warehoused, except in such full iron-bound casks, marked and numbered, and having cut, branded, or painted thereon such particulars as aforesaid, or shall put into or keep in such warehouse any other liquors or other spirits other than as provided by this act; or if any such distiller or distillers, or any other person or persons whatsoever, by his, her, or their order, privity, connivance, or direction, after any such spirits shall have been removed to and secured in any warehouse for keeping such spirits for exportation, shall open any of the locks or doors in the absence of the proper surveyor, or supervisor, and officer of excise; or shall make or obtain any way or kind of entrance, or access, into any such warehouse, or shall remove any part whatever of the partition between any warehouse or warehouses for keeping spirits, and any other place or places whatsoever next thereunto adjoining; or shall, after any such warehouse shall have been so approved of as aforesaid, make any addition to or in any way alter the same without notice first given to the proper supervisor of excise, of such intended addition to or alteration in such warehouse, and his consent in writing first had and obtained for the same; or shall remove any of the said spirits from any locked warehouse to any other warehouse, or to be put on shipboard and exported or otherwise removed, except as provided by this act; or shall by any art, contrivance, or device whatsoever, privately remove, convey away or conceal, or cause, procure or suffer to be privately removed, conveyed away or con-

If distiller shall open any of the locks in the absence of the officer;

or make any way into such warehouse;

or alter the condition thereof, without giving notice to the surveyor,

and his consent be first had;

or shall privately remove any of the spirits, he shall forfeit

such removal be commenced at any time of the day before the hour of nine in the forenoon, or continued after the hour of two in the afternoon. 6 G.4. c.80.

§ 84. The officer of excise to whom any such notice shall have been given shall attend at the spirit-stock of every such distiller at the time mentioned as aforesaid in such notice, and such officer shall ascertain the quantities and strengths of all such spirits, as shall be in the possession or stock of such distiller, in such manner as shall be directed by the commissioners of excise, and of the spirits proposed or intended to be sent out of such stock, and shall compare the marks and numbers, and the several particulars cut, branded, or painted, as aforesaid, on the several casks in which such spirits shall be contained, with the marks and numbers and particulars described and set forth in the notice for the warehousing of such spirits; and every such officer shall or may continue in the place where such stock is kept, until the whole of the spirits of which such notice shall be given, shall be removed out of the stock of such distiller, under permit as aforesaid; and immediately after the removal of such spirits, such officer shall take stock on such distiller, in such manner as shall be directed by the commissioners of excise, and set forth in the stock-book the alteration in such stock found after the removal of such spirits. Officers shall attend removal of spirits, and take stock of distillers.

§ 85. Immediately on the arrival of such spirits under permit as aforesaid at the warehouse, the proper officer surveying such warehouse shall take an account of the contents of every cask, by gauge, or weight and temperature, as he may think fit, or as may be ordered by the commissioners of excise, and the strength of the spirits contained therein, and shall enter an account thereof, with the mark and number of each such cask, in a book to be by him kept for that purpose, and shall also take a sample of half a pint of such spirits, drawn from every such cask, and keep the same labelled, with all such particulars as aforesaid, until three months after the whole of such spirits shall be delivered from such warehouse for exportation shall be exported, and shall then deliver the same to such distiller; and such officer shall, after taking such account as aforesaid, deliver to the distiller or person requiring the same, for the use of such distiller, a certificate specifying the mark and number of each of the several casks, with the several particulars so found by him as aforesaid, with the day of the month and year when such spirits were warehoused as aforesaid. Officer at the warehouse shall take account and give receipts for spirits warehoused, and take samples.

§ 86. Such certificate shall be forthwith delivered over by every such distiller to the officer surveying the distillery of such distiller, and upon the delivery of such certificate, it shall be lawful for such officer to deduct from the number of gallons of proof spirits for which such distiller shall then be charged or chargeable with duty for the next ensuing payment, the number of gallons computed at proof so warehoused, and to return the charge of duty so payable as aforesaid, against the distiller to the commissioners or collector of excise, for the remaining number of gallons, which shall be a charge against such distiller accordingly; and every such officer shall annex to such return such certificate as aforesaid, as his voucher for having made such deduction as aforesaid. Such receipt shall be delivered by distiller to the officer, who shall give credit for the same in the charge against distiller.

§ 87. It shall be lawful for the distiller or proprietor of any such spirits so lodged in any warehouse as aforesaid, in the presence *of the proper officer, who is hereby* required when requested Distiller may view and show his spirits in warehouses.

to attend at all reasonable times for that purpose (but not oftener than once in twenty-four hours), to view, examine, and show for sale such spirits, or any part thereof, and to examine the state of the casks, and to prevent leakage or drainage therefrom.

asks illed are-

§ 88. It shall be lawful for any distiller or other proprietor of spirits warehoused as aforesaid, under the provisions of this act, to cause any cask or casks of spirits belonging to such distiller or proprietor, and which such distiller or proprietor shall require to be delivered out for exportation or removal, pursuant to the provisions of this act, to be filled up if necessary (in the presence of the surveying officer, or such other person as the commissioners of excise shall appoint,) from or out of any other cask or casks of spirits belonging to such distiller or proprietor, and which shall then be in such warehouse; and in case any part of the contents of any such cask shall remain after the filling up of any other cask or casks, the said cask, part of whose contents shall have been so used in filling, shall be kept apart for the like purpose, or if reduced below 20 gallons, shall be delivered into the dealer's stock of any such distiller, on his or her payment of duty on such residue.

Distiller shall e liable to pay luty on deficiency of spirits in warehouse.

§ 89. In case the quantity of any spirits computed at proof, which shall have been or shall be lodged in any warehouse as aforesaid, shall at any time or by any means fall short or be deficient of the actual quantity so computed, which was so warehoused, after allowing for so much and such part of such spirits so computed as shall have been duly exported or removed, the distiller or proprietor of such spirits shall be subject and liable to pay the full duties for home consumption upon such spirits for and in respect of the quantity so found deficient as aforesaid, and shall pay and satisfy the same upon demand, before any other of the spirits so warehoused then remaining shall be permitted to b taken out of such warehouse; and all such spirits so remainin shall be subject to the duties on the quantity so deficient, an be sold by the commissioners of excise, for expo and of other charges, paying ov housed such spirits,

removed; and the person or persons to whom the same shall be sent for sale shall have the same privileges and be subject to the like licence, regulations, and penalties in respect of such spirits, as dealers in spirits in the country into which such spirits shall be imported or brought, and as if such spirits had been distilled within the same.

spirits shall be dealt with as spirits of that country.

§ 92. No spirits, whether medicated or mixed with any other ingredient or ingredients, or not, which shall be made or distilled in *England*, *Scotland*, or *Ireland* respectively, shall be removed or sent from either *Scotland* or *Ireland* into *England*, or from *England* into *Scotland* or *Ireland*, except such spirits only as shall, for the purpose of such removal, be taken from and out of a warehouse in which the same shall be then warehoused, without payment of duty; and that before any such spirits shall be delivered out of such warehouse for that purpose, the proprietor or proprietors, or person or persons who shall propose or intend to take out and ship such spirits for such removal as aforesaid, shall give two days notice in writing to the surveying officer of excise of such warehouse in *England*, *Scotland*, or *Ireland* respectively, of the time when he, she, or they shall propose or intend to take out such spirits from such warehouse, and shall specify in every such notice the number of casks intended to be so removed, and also the mark and number of each cask, the full content thereof in gallons, and the strength and quantity of the spirits contained therein, and the total quantity of spirits to be so removed, the name of the vessel and of the master thereof, or of the carriage or conveyance by which such spirits are to be so removed, the name of the port or place at which such spirits are to be shipped, and of the port or place to which such spirits are to be removed, and of the person or persons at such last-mentioned port or place to whom the same are to be sent; and every such officer shall, upon the receipt of such notice, be authorised to examine every such cask, and ascertain the truth of the several particulars aforesaid, and the temperature and strength of such spirits, and the quantity of spirits contained in each of such casks, either by gauge or by taking the weight thereof, and shall, after receipt of the certificate of payment of duty, hereinafter mentioned, when such spirits are intended to be so removed for consumption, and upon and according to the request in writing of such proprietor or proprietors, person or persons as aforesaid, specifying the several particulars aforesaid, grant a permit for the removal of such spirits as aforesaid, expressing in or by indorsement of such permit the several particulars as aforesaid, of the total number of casks, the mark, number, content, and ullage of each such cask, the temperature, quantity, and strength of the spirits contained therein, the total quantity of spirits, and the names of the ship and master, or conveyance, and of the ports or places of shipment and destination, and name or names of the person or persons to whom such spirits are intended to be sent, and shall forthwith transmit by post a duplicate of such permit to the principal officer of excise at the port or place, or nearest thereto, to which such spirits are so to be sent; and if any such spirit shall be removed from *England* into *Scotland* or *Ireland* respectively, or from *Scotland* or *Ireland* into *England*, except spirits so taken from warehouse, and duty paid as aforesaid, or *otherwise than as aforesaid, or* not accompanied by such permit

Spirits sent from England to Scotland or Ireland, or from Scotland or Ireland into England, to be taken from warehouse.

Penalty on removal of spirits except from warehouse with a permit, &c.

; G.4. c.80.

as aforesaid, or in any greater quantity, or of greater strength, or in casks of any greater number or less content than shall be expressed in such permit, all such spirits, together with the casks containing the same, shall be forfeited, and shall and may be seized by any officer or officers of excise; and the person and persons so offending shall for every such offence forfeit and lose the sum of treble the value of such spirits, including the duty aforesaid, or of 200*l.*, at the election of the commissioners of excise, or the person who shall inform or sue for the same.

No such spirits shall be so removed for consumption without payment of English duty before delivery from the warehouse.

§ 93. After such account shall have been taken as aforesaid, and before any such spirits shall be delivered out of any such warehouse for such removal for consumption, the distiller or proprietor, intending to remove the same, shall pay to the collector of excise or other person employed by the commissioners of excise to receive the same, the full duty of excise payable on *British* spirits distilled in *England*, for and in respect of all such spirits intended to be so removed, whether such spirits shall have been distilled, and shall then be warehoused in *England*, *Scotland*, or *Ireland*, and shall be intended to be removed from *England* into *Scotland* or *Ireland*, or from *Scotland* or *Ireland* into *England*; and such collector of excise, or other officer, shall, upon request, sign and give to such distiller or proprietor a certificate of such payment of duty.

Certificate thereof by collector of excise.

On delivery of spirits from the warehouse in Scotland or Ireland, for removal to England, part only of the duty may be paid, with bond for payment of the residue in England within

§ 94. Provided, that on the delivery from the warehouse of any spirits distilled or made in *Scotland* or *Ireland*, for the removal thereof by sea to *England* for consumption, it shall and may be lawful for the commissioner and commissioners, and assistant commissioners and collectors of excise respectively in *Scotland* or *Ireland*, to receive, and they are hereby respectively authorised to receive and accept from the person or persons to whom such spirits shall be delivered from the warehouse, for such removal, in lieu of the whole of the duty by this act made payable thereon, so much thereof as shall be equal to the amount of duty payable on such

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said, where such spirits are intended to be so removed for consumption, and such permit having been requested and granted as aforesaid, such officer shall deliver such spirits as shall be mentioned in such certificate and permit to be so removed; and no such removal shall take place on any excise-office or custom house holiday, or commence at any time of the day before the hour of nine in the forenoon, or continue after the hour of two in the afternoon; and all such spirits shall be shipped, removed, carried, or conveyed to the place of destination mentioned in such permit, and delivered there in the same casks in which they were originally warehoused, with the marks, numbers, and notes of the contents as aforesaid branded, cut, or painted thereon, except in cases of damaged or leaky casks, which may be changed with the leave of any commissioner of excise, or of the surveyor or supervisor of the district, and like marks, numbers, and notes shall be branded, cut, or painted on the head of each new cask, as had been branded or cut on the leaky or damaged casks respectively, except as varied by any difference of content, ullage, temperature, or strength.

house-keeper shall deliver the spirits to be removed.

§ 96. No spirits made in *England*, *Scotland*, or *Ireland* shall be shipped or carried, conveyed, or removed from *England* to *Scotland* or *Ireland*, or from *Scotland* or *Ireland* to *England*, otherwise than as provided and directed by this act, or in any ship or vessel of any less burthen than fifty tons, or in any cask or vessel, except a cask which shall contain eighty gallons of such spirits at the least, on pain, in addition to all other penalties and forfeitures, of the forfeiture of all such spirits as shall be so shipped or removed, carried or conveyed, contrary to any or either of the prohibitions aforesaid, together with the casks or packages containing such spirits, and the ship, vessel, or boat, horses, cattle, and carriages, employed in such removal thereof; and such spirits, casks, packages, ship, vessel, boat, horses, cattle, and carriages shall and may be seized by any officer or officers of excise.

No British spirits to be sent from England, Scotland, or Ireland, or either of them, except as herein mentioned; or in vessels of not less than fifty tons, or in casks containing eighty gallons at the least.

§ 97. The proprietor or proprietors of any spirits removed by sea from *England* into *Scotland* or *Ireland*, or from *Scotland* or *Ireland* into *England*, shall, within ten days next after the arrival of the ship or vessel wherein any such spirits shall be so removed, within the port into which such spirits shall be brought, make due entry with the collector of excise of the said port, of all such spirits on board such ship or vessel, and deliver to such collector such certificate of payment of duty thereon, or permit, as aforesaid, and shall then land all such spirits; and if such proprietor or proprietors shall neglect or refuse, for such ten days as aforesaid, to make such entry, and deliver such certificate of payment of duty as aforesaid, or to land such spirits as aforesaid, such spirits shall be forfeited, together with the casks and packages containing the same, and shall and may be seized by any officer or officers of excise; and the commissioners of excise shall cause such spirits to be publicly sold to the best bidder, at and for a price not less than the amount of such duties as aforesaid, at such places as they shall think proper; and if such spirits will not produce a price equal to the amount of the duties payable on such spirits, they shall be destroyed in such manner as the said commissioners of excise shall think proper, and a reward shall be paid to the seizing *officer or officers, not exceeding* two shillings *per* gallon,

Entry to be made of spirits brought from either country into the other, and the spirits landed in ten days.

Commissioners to cause such spirits to be publicly sold.

The commissioners may reward the officers not exceeding 2s. per gallon, if spirits be destroyed.

6 G. 4. c. 80.

over and above all expenses, in lieu of all other allowances; and if all such spirits shall be duly landed according to the provisions of this act, the proper officer at such port shall deliver to the proprietor or proprietors thereof a certificate thereof, and the commissioners of excise shall, upon production of such certificate of payment of duty or permit as aforesaid, and of such other certificate of the landing of such spirits as last aforesaid, thereupon cause to be repaid to the proprietor of all such spirits as shall be so removed from *England* into *Scotland* or *Ireland*, and on which the excise-duty payable in *England* has been duly paid for and in respect of every gallon of such spirits computed at proof, the difference between the amount of the duty so paid and the duty payable in the country into which such spirits shall be so brought.

On spirits sent from England to Scotland or Ireland duty paid, the difference between the English and Scotch or Irish duty shall be repaid on the quantity landed.

§ 98. In all such entries so to be made, the number of casks and other packages containing such spirits, with the particular numbers and marks of each of them on board of each respective ship or vessel in which the same shall be so brought, shall be inserted, on pain for every neglect or refusal thereof to forfeit all such spirits, with the cask or other package wherein the same shall be contained, and the same shall and may be seized by any officer or officers of excise.

The number of casks, and the particular number and mark of each, to be inserted in the entries.

§ 99. Provided that no spirits which shall be or shall have been made or distilled in *Scotland* or *Ireland* respectively from unmalted corn or grain, mixed or unmixed with malt, shall be taken out of any warehouse, store, or place, for removal to *England*, unless such spirits were made and warehoused by some distiller, having, at the time when such spirits were so made and warehoused, no spirits made from malt only, or on which any allowance shall be or shall have been made in respect of the duty on such malt in his or her stock or possession, or in such warehouse, and which shall be so certified by the proper officer at the time of warehousing, and also at the delivery thereof; nor shall any spirits made or

Spirits made entirely from malt shall be warehoused separately, and shall not be removed to England unless on repayment of allowance.

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eing shipped as stores, and of being consumed upon any outward nd homeward voyage to or from parts beyond the seas, without ayment of the duty of excise, subject nevertheless, except as foresaid, to the conditions, regulations, restrictions, and securi- es required by any act or acts in force in *Great Britain*, relating o the shipping of rum as stores. 6 G.4. c.80. under like conditions as rum is allowed to be shipped as stores.

By stat. 6 *G.*4. *c.* 58. The former duties, allowances, and draw- acks of excise in respect of spirits distilled or made in *Scotland* r *Ireland*, are repealed, and new duties, &c. enacted. 6 G.4. c. 58. Excise duties, &c.

And by stat. 7 & 8 *G.* 4. *c.* 52. (§ 66. to 75.) Further regulations especting the same are enacted. 7&8 G.4. c.52.

By stat. 9 *G.* 4. *c.* 44. § 4. All acts in force in *England* relating o foreign and colonial spirits, &c. are extended to the U. K. 9 G.4. c.44.

By stats. 2 *G.*3. *c.*5. § 29.—42 *G.* 3. *c.* 93. § 12. All spirits made n *G. B.* for exportation, shipped for stores, shall, during the time he ship is within the limits of any port of this kingdom, be openly towed, so that the officers may at any time examine the same, on ain of forfeiting the double duties which the wort or wash from rhence such spirits were extracted would have been chargeable rith, had they been extracted from wort or wash made in *England* or extracting spirits for home consumption from malt, corn, grain, r tilts, at the rate of 100 gallons of wort or wash for every 24 allons of such spirits; which charge shall be paid by the master f the ship. 2 G.3. c.5. 42 G.3. c.93. All spirits shipped for stores shall be openly stowed, &c.

By stat. 28 *G.* 3. *c.* 37. § 18. If any rum or spirits *shipped as tores* shall be relanded, the same, together with the casks or other ackage, and also the boats, vessels, horses, cattle, and carriages nade use of in relanding or removing thereof, shall be forfeited, nd may be seized by any officer of customs or excise; and every erson who shall so unship or cause to be unshipped any such rum r spirits, or shall be assisting or concerned therein, or to whose ands the same shall knowingly come, shall forfeit treble the value hereof; and if any master or other person on board such vessel hall assist in or connive at such relanding, he shall (over and above ll other penalties) forfeit 100*l.* 28 G.3. c.37. Rum, &c. shipped as stores being relanded.

By stat. 57 *G.* 3. *c.* 123. § 16. Any cask not containing less than 50 gallons of rum, of the growth or produce of the *British* sugar plantations, may be shipped as stores to be spent on board any ship in a voyage to parts beyond the seas, freed from the duties of excise, but subject to the rules, regulations, penalties, and forfeitures by the laws now in force. 57 G.3. c.123. Rum may be taken out of warehouse and allowed to be shipped in casks containing not less than 60 gallons, as stores to be consumed on board free from duty.

No rum shall be shipped for stores (except by permission of the commissioners of excise) but at the port at which the ship is fitted out for the voyage; and the oath required to be made, that the same is to be shipped as stores, and consumed in the voyage, shall be made by affidavit in writing by the master or purser of the ship. Conditions.

If the contents of any cask of rum shipped for stores shall be drawn off, or the rum or any part thereof used or altered, either in quantity or quality, before the ship shall have sailed upon her voyage, such cask, and the rum therein contained or drawn off, shall be forfeited, over the penalty of the bond given on the shipment, and may be seized by any officer of excise. Penalty.

By stat. 1 & 2 *G.* 4. *c.* 94. It is enacted, that it shall not be lawful to export or to enter for *exportation* from any part of G. B. to the *islands of Jersey, Guernsey, Alderney*, or *Sark*, or to any or either 1&2G.4. c.94. No rum of the British colonies

1&2G.4. c.94.

shall be imported from G.B. to Jersey, &c. on pain of forfeiture, unless permission be given by the commissioners of customs, who may grant licence to export rum under the conditions hereinmentioned.

of them, under the penalty or forfeiture thereof, to be seized by any officer of the customs or excise, any rum of the production and manufacture of the *British* colonies or plantations, unless permission be first given for that purpose by the commissioners of H. M.'s customs in *England*, or any four or more of them, by licence under their hands; and the said commissioners, or any four or more of them, are hereby authorised and required, on application to them in writing for that purpose, to grant their licence from time to time under their hands (such licence to continue in force 30 days from the date thereof and no longer), to any of H. M.'s subjects, to export from any port in *England*, in *British*-built ships, owned, registered, and navigated according to law, and not of less burthen than 70 tons (according to the rules for admeasurement prescribed by law), to the said islands of *Jersey*, *Guernsey*, *Alderney*, and *Sark*, any rum of the production or manufacture of the *British* colonies or plantations, in such quantities as shall be approved of and directed from time to time by the commissioners of H. M.'s treasury, or any three of them.

(*d*) Concerning Importers and Dealers in Spirits by Wholesale and Retail; and the recovering and Application of Penalties.

6 G.4. c.80. Licence.

By stat. 6 *G.* 4. *c.* 80. § 3. New duties are imposed upon excise licences required to be taken out annually by dealers in and retailers of spirits in *England*.

Persons having in custody more than 80 gallons of spirits, to be deemed dealers.

§ 122. All and every person or persons whomsoever who shall have in his, her, or their custody any spirits exceeding the quantity of 80 gallons, and not being an entered and licensed distiller, rectifier, or compounder, or retailer of spirits, shall be deemed and taken to be a dealer in spirits, and subject to the survey of the officers of excise, and to all regulations, penalties, and forfeitures to which such dealers are subject and liable.

§ 123. And for enabling the officers of excise the more readily

6 G.4. c.80.

No dealer to send out or keep any plain British spirits, or any compounded spirits, but of a certain strength, &c.

§ 124. No dealer in *British* spirits shall sell or send out or receive, or have or keep in his or her stock, custody, or possession, any plain *British* spirits, except spirits of wine, of any strength exceeding the strength of 25 *per centum* above hydrometer proof, or of any strength below 17 *per centum* under hydrometer proof, or any compounded spirits, except shrub, of any greater strength than 17 *per centum* under hydrometer proof, on pain of forfeiting all such spirits as shall be sold, sent out, had or kept by any such dealer contrary hereto, with the casks or other packages containing the same, which shall and may be seized by any officer or officers of excise.

Dealer may send out spirits of wine received by permit, and kept separate from other spirits, not exceeding 100 gallons to one person in the same day.

§ 125. Provided, that it shall be lawful to and for any dealer in spirits to have in his custody or possession any spirits of wine legally received by permit, upon condition of his, her, or their keeping his, her, or their whole stock of such spirits of wine separate and apart from his, her, or their stock of all other liquors, and in a vault or room specially entered for that purpose as aforesaid, but not otherwise, and to demand and receive permits for sending out spirits of wine of the strength of 43 *per centum* above hydrometer proof, or any higher degree of strength, so that the whole quantity of such spirits of wine to be sent to any one person in the same day shall not exceed 100 gallons; and the officer granting such permit shall therein express the same to be spirits of wine, and shall debit the stock of such dealer accordingly.

Dealers in foreign spirits to keep British spirits in separate places, on forfeiture of 100*l.*, or 20*s.* for every gallon found.

§ 126. Every dealer in spirits who shall have or receive into his custody or possession any foreign or colonial spirits (not being compounded colonial spirits), and also any *British* spirits, shall keep the same separate and apart, and in separate cellars, vaults, or other places, specially entered for that purpose respectively, upon pain of forfeiting the sum of 100*l.*, or 20*s.* for every gallon of *British* spirits, or compounded spirits, which shall be discovered or found in his custody or possession, in any vault, cellar, or other place, not specially entered for that purpose, or where any foreign or colonial spirits (not being compounded colonial spirits) shall be found or kept; and for every gallon of foreign or colonial spirits (not being compounded colonial spirits) which shall be discovered or found in his custody or possession, in any vault, cellar, or place, not specially entered for that purpose, or where any *British* spirits, or compounded spirits, shall be found or kept, together with all such spirits so discovered and found, and the casks and packages containing the same, which shall and may be seized by any officer or officers of excise; and no person or persons whomsoever shall mix or keep, sell or send out any *British* spirits mixed with foreign or colonial spirits, upon pain of forfeiting for every such offence the sum of 100*l.*; and all such spirits so mixed or sold, or sent out, contrary to the true intent and meaning hereof, together with the casks and packages containing the same, shall also be forfeited and lost, and shall and may be seized by any officer or officers of excise: Provided, that every dealer in and retailer of spirits shall be allowed on all foreign or colonial spirits (not being compounded colonial spirits), lawfully brought into his or her stock, additional credit, over and above credit for the number of gallons expressed in the permit accompanying such spirits, and delivered to the officer for such further number of gallons as shall *be equal to the number* of gallons of water added *to and mixed with such spirits in* the presence of the officer, in

British not to be mixed with foreign or colonial spirits, or sold or sent out, on forfeiture of 100*l.*, and seizure.

6 G.4. c.80.

order to reduce the strength thereof to the strength of 17 *per centum* under proof.

Retailer not to be concerned in any distillery or rectifying-house, &c. on penalty of 200*l*.

§ 128. No retailer of spirits shall be a distiller, rectifier, or compounder of spirits, or have any part or share in any distillery or rectifying-house, or be in any manner interested or concerned in the trade or business of a distiller, rectifier, or compounder of spirits; and if any such retailer shall be a distiller, rectifier, or compounder of spirits, or shall have any part or share in any distillery or rectifying-house, or be in any manner interested or concerned in the trade or business of a distiller, rectifier, or compounder of spirits, such retailer shall, for every such offence, forfeit and lose the sum of 200*l*.

Retailers not having a dealer's licence, not to draw any permit to any seller of spirits.

§ 129. No retailer of spirits, not taking out or having a licence as a dealer in spirits, shall be entitled to request, or shall have any permit granted for the removal of spirits, except to a private person not being a rectifier or compounder, or dealer in or retailer of spirits; and every retailer, not taking out or having such dealer's licence, who shall sell, send out, or deliver any spirits to any distiller, rectifier or compounder of, or dealer in or retailer of spirits, shall forfeit the sum of 50*l*.; and all such spirits so sold, sent out, or delivered by such retailer, shall, together with the package containing the same, be forfeited, and shall and may be seized by any officer or officers of excise, and every permit drawn or granted for that purpose shall be wholly null and void.

No retailer to keep or send out any spirits of wine, or any spirits of any other strength than herein specified.

§ 130. No retailer of *British* spirits shall sell, or send out or receive, or have or keep in his or their stock, custody, or possession, any spirits of wine, exceeding at one time ten gallons, or any plain *British* spirits, of any strength exceeding the strength of twenty-five *per centum* above hydrometer proof, or lower than seventeen *per centum* under hydrometer proof, or any compounded spirits, not being shrub, of greater strength than seventeen *per centum* under hydrometer proof, or any foreign or colonial spirits (not being compounded colonial spirits) of less strength than seventeen *per centum* under hydrometer proof, on pain of forfeiting all



ual to such excess, shall and may be seized out of any part of e stock of such retailer, by any officer or officers of excise; and e retailer, in whose stock, custody, or possession such excess shall found, shall forfeit and lose the sum of 20*s.* *per* gallon for every llon of such excess. 6 G.4. c.80.

§ 132. If any person shall knowingly sell or deliver, or cause to sold or delivered, directly or indirectly, any quantity of spirits any other person, to the end that the same may be unlawfully tailed or consumed, or carried into consumption in any part of *gland*, such person so offending shall for every such offence for- it and lose, over and above all other penalties, the sum of 100*l.* Persons, &c. selling, &c. liquors to be unlawfully retailed or consumed, to forfeit 100*l.*

§ 133. If any person or persons shall knowingly receive, buy, have in his, her, or their custody or possession, any spirits after e same shall be removed from the place where the same ought have been charged with the duty payable in respect thereof, or fore the duty to which the same shall be liable has been charged d paid, or secured to be paid, or before such spirits have been wfully condemned as forfeited, the person or persons offending erein, whether he, she, or they had or have, or had or have not, do or do not claim or pretend to have any property or interest erein, shall for every such offence forfeit and lose all such spirits received, bought, or had in his, her, or their custody or posses- on, and treble the value thereof, according to and at the rate d price which the best spirits of the like kind and strength do or all bear and sell for in *London*, at the time when such penalty all be incurred. Persons having in possession spirits, &c. for which the duties have not been paid, forfeit the same, and treble the value.

§ 134. No licence shall be granted for the retailing of spirits thin any gaol, prison, house of correction, or workhouse for any rish poor, and that all licences granted or to be granted contrary this provision shall be void and of no effect; and if any gaoler, eeper, or officer of any gaol, prison, or house of correction, or y governor, master, or officer of any workhouse for any parish or, shall sell, use, lend, or give away, or knowingly permit or ffer any spirits to be sold, used, lent, or given away in such ols, prisons, or houses of correction, or workhouses, or brought to the same, other than and except such spirits as shall be pre- ribed or given by the prescription and direction of a regular hysician, surgeon, or apothecary, and to be applied in pursuance f such prescription from the shop of some regular apothecary, very such gaoler, keeper, governor, master, or other officer, shall r every such offence forfeit and lose the sum of 100*l.*; and n case any such gaoler or other officer, being convicted thereof as foresaid, shall again offend in like manner, and be thereof a second me lawfully convicted, such second offence shall be deemed a for- iture of his office. No licence to be granted for retailing spirits within gaols, houses of correction, or workhouses for parish poor, &c. nor shall spirits be used there, &c. except as shall be medicinally prescribed.

§ 135. It shall be lawful for H. M.'s justices of the peace, or ny one of them, upon information upon oath that any spirits are ept and disposed of in any such gaol, prison, house of correction, r workhouse for parish poor, to enter and search, or to authorise nd empower any constable, headborough, or other peace-officer f the parish where any such places are situated, by warrant under is hand and seal, to enter and search any such gaol, prison, house f correction, or workhouse; and in case any spirits shall be found herein (except such as are directed to be used medicinally as foresaid), it shall *and may be lawful for* such constable, headbo- Justices, upon information that spirituous liquors are kept, &c. in such gaol, &c. may enter and empower any constable to seize the same.

6 G. 4. c. 80.

rough, or overseer of the poor, to seize such spirits, and to cause the same to be forthwith staved and destroyed.

Punishing persons conveying, &c, spirituous liquors into workhouses.

§ 136. No person shall carry or bring, or attempt to endeavour to carry or bring any spirits (except to be used in the way of medicine, as herein-before mentioned,) into any workhouse for parish poor; and if any person or persons shall offend therein, it shall be lawful for the master or chief officer of such workhouse, or his or their servants, to arrest such person or persons, and to carry him, her, or them before a justice of the peace of the county, division, city, town corporate, or liberty, where such workhouse is situate, who is hereby empowered to hear and determine such offence in a summary way, and to administer an oath to the witnesses; and if by the oath of one credible witness or otherwise he shall convict such person or persons of such offence, he shall forthwith commit such offender or offenders to prison, or to the house of correction, there to be kept at hard labour for any time not exceeding three months.

A fair copy of the three preceding clauses to be always kept hung up in the most public place of such house, &c.

§ 137. Every master and chief officer of every workhouse for any parish poor shall procure one or more copy or copies of the three preceding clauses to be printed, or fairly written and hung up in one of the most public places of his workhouse for parish poor, and renew the same from time to time, so that it may be always be kept fair and legible, on pain of forfeiting the sum of 10*l.* for every wilful default, to be levied by warrant of any justice of the peace of the county, division, city, town corporate, or liberty, where such gaol, prison, house of correction, or workhouse shall be situate, to be granted on conviction of such default in a summary way before such justice, by the oath of one or more credible witness or witnesses, which oath such justice is hereby empowered to administer; and it shall be lawful for every justice of the peace to enter into any gaol, prison, house of correction, or workhouse for parish poor, within the limits of his jurisdiction, and demand a sight of such copy so hung up as aforesaid; and if the same shall not be forthwith shown to him so hung up in some public

Justices may enter and demand a sight thereof; and if the same be not



shall, by warrant or warrants under his or their hand and seal, or hands and seals, commit the offender or offenders to hard labour in the house of correction for the said county, riding, division, city, or liberty respectively, for the space of three months, to be reckoned from the day of the said commitment; and the person or persons so committed shall not be discharged until he, she, or they shall have paid the said sum of money, or until the full expiration of the said three months. 6 G. 4. c. 80.

§ 139. It shall be lawful for one or more such justice or justices of the peace as aforesaid, on any information upon oath made before him or them against any person or persons, for hawking, or selling or exposing to sale any spirits contrary to this act, to issue his or their warrant or warrants under his or their respective hands and seals, to be directed to any constable or other ministerial officer of the peace, for the apprehending and bringing such offender or offenders before such justice or justices of the peace, in order to such offender or offenders being by such justice or justices dealt with according to law. One or more justice, upon information on oath, may issue warrant to apprehend such offenders.

§ 140. And whereas, for want of a constable or other ministerial officer of the peace being at hand to apprehend such offender or offenders, he, she, or they has or have often escaped unpunished; it is enacted, that it shall be lawful for any person or persons whomsoever, to seize and detain any person or persons who shall hawk or sell or expose to sale, in manner aforesaid, any spirits, by whatsoever name or names they are or may be called or distinguished, for such reasonable time as he, she, or they may give notice to the constable, headborough, tythingman, churchwarden, overseer of the poor, or some other peace or parish officer or officers, who are hereby required to carry such person so seized and detained before some one of H. M.'s justices of the peace for the county or place where such offence or offences shall be committed; which said justice of the peace is required to proceed to the examination of such person so seized and brought before him for such offence, in the same manner as if such person so seized had been apprehended and brought before him by a constable, or any other ministerial officer of the peace, under such warrant as aforesaid. Any person may detain a hawker of spirits, and give notice to a peace-officer, who is to carry the offender before some justice.

§ 141. And for the more effectual discovery of offenders, it is enacted, that on the commission of any offence under this act, either of the offending parties who shall first discover and inform against the other or others of such offending parties, before any information has been lodged against such informing party for such offence, shall, upon conviction of the person or persons against whom such information shall be given, be discharged and acquitted from all penalties to which at the time of such information given such informing party may be liable for or by reason of any such offence committed by such informing party; and that the evidence of such informing party shall, on any trial at law touching such offence, be admitted to prove the facts thereof or relating thereto. Either of the offending parties informing against the other, shall be acquitted of his own penalty.

§ 142. And, for the encouragement of those who shall discover offences committed against this act, it is enacted, that where any person or persons shall be lawfully convicted of any offence against any of the provisions of this act, and the pecuniary penalty imposed for such offence shall not be paid and cannot be levied, or the person *incurring any such penalty is* not able to pay the same, Informers may be rewarded by commissioners, not exceeding 50*l.*, if the penalty is not paid and cannot be

6 G.4. c.80.

levied, or if the offender shall be sent to prison.

but in lieu thereof is sent to prison, it shall and may be lawful for the commissioners of excise to cause such reward as they shall think fit, not exceeding 50*l.* in each case, to be paid to the several and respective persons who shall appear to them to be entitled thereto as informers, out of any monies in their hands arising by any penalties or forfeitures under the excise laws.

Armed persons opposing the law, or violently rescuing such offenders, or assaulting officers, informers, or witnesses, guilty of felony, and to be transported for seven years.

§ 143. If any person or persons shall, armed with a gun, pistol, sword, or pike, or in a violent manner with staves or stones, rescue any offender arrested, or any goods or chattels seized under this act, or shall prevent such arrest of seizure, or shall assault, beat, or wound any officer or officers, or other person or persons acting in his or their aid or assistance, or any person or persons who shall have given or be about to give any information against, or shall have discovered or given evidence against, or be about to discover or give evidence against, or shall seize or bring to justice any person or persons offending against this act, or who shall have seized or be about to seize or examine any goods or chattels forfeited under this act, or shall forcibly oppose the execution of any of the powers given by this act, or who, being so armed, or with such violence as aforesaid, shall offer or threaten so to do, then all and every person or persons so offending, and their aiders and abettors thereof lawfully convicted, shall be and be adjudged to be guilty of felony; and every such felon shall be subject to the like pains and penalties as in cases of felony, and the courts by and before whom he, she, or they shall be convicted, shall have full power and authority of transporting such felon and felons for the space of seven years, in like manner as other felons are directed to be transported by the laws and statutes of this realm.

Constable or other peace officer not executing this act upon notice or his own view,

§ 144. If any constable or other ministerial officer of the peace whatsoever, shall refuse or neglect, upon due notice or request, or on his own view, to be aiding and assisting, or to proceed as aforesaid in the execution of this act, such constable or other ministerial officer of the peace being thereof convicted by the oath of one or

[redacted]

office or employment whatsoever; and every person who shall directly or indirectly give or offer, or promise to give to any officer or person so employed as aforesaid, any sum of money or other recompence or reward whatsoever, or any security for any sum of money, recompence or reward whatsoever, or shall propose, make or enter into any collusive agreement with any officer or person so employed as aforesaid, in order to corrupt and prevail upon such officer or person as last aforesaid, to do, conceal, or connive at any act or thing, whereby any of the provisions of this or any other act of parliament relating to H. M.'s revenue of excise on spirits shall or may be evaded or broken, or his said revenue defrauded, or to do or perform, or permit or suffer to be done or performed, any act or thing whatsoever, contrary to the duty of such officer or person so employed as aforesaid, or to neglect or omit to do or perform any act or thing whatsoever, belonging or appertaining to the business or duty of such officer or person so employed as aforesaid, shall, for each and every such offence, whether such sum of money or other reward or promise of, or security for the same, or such agreement be received, accepted, entered into, or performed or not, forfeit and lose the sum of 500*l.*: Provided always, that in case any such officer or person so employed as aforesaid, who shall have directly or indirectly asked or demanded, or taken or received any such sum of money, or other recompence or reward, or any promise of, or security for the same, or acquiesced in, made, or entered into any such collusive agreement, shall before any complaint shall have been made, or any proceedings had against him for having committed any such offence or offences as aforesaid, give information of the gift, offer, or promise, to give such sum of money or other recompence or reward or security for the same, or of such collusive agreement proposed, or made, or entered into, and proceedings shall thereon be thought fit to be instituted, so that such penalty as aforesaid shall be recovered against the person who shall have directly or indirectly given or offered, or promised to give any such sum of money or other recompence or reward or security for the same, or shall have proposed, made, or entered into any such collusive agreement; or in case the person who shall have directly or indirectly given or offered, or promised to give any such sum of money or other recompence or reward or security for the same, or shall have proposed or made, or entered into any such collusive agreement, shall, before any complaint shall have been made, or any proceedings had against him or her for having committed any such offence or offences, give information of the asking or demanding, or of the taking or receiving of any such sum of money or other recompence or reward, or promise of security for the same, or of such collusive agreement acquiesced in, made or entered into by any officer or person so employed as aforesaid, and proceedings shall thereon be thought fit to be instituted, so that such penalty as aforesaid shall be recovered against such officer or person so employed and offending as aforesaid; then and in either of the said cases either of the said parties so first giving such information shall be exempted from and indemnified against the penalties and disabilities imposed on such party for such offence or offences by this act.

6 G. 4. c. 80.

§ 146. If any distiller, rectifier or compounder of spirits, or any dealer in or retailer *of spirits, or any* workman or servant belong-

Penalty for obstructing offi-

6 G.4. c.80.

cers in cases not otherwise provided for, 200*l*.

ing to or employed, or authorised by such distiller, rectifier or compounder, dealer or retailer, or if any other person or persons shall molest, hinder, oppose, or obstruct any officer or officers of excise, or any person or persons acting in his or their aid or assistance, in the due execution of the powers and authorities by this act granted, or any of them, every such distiller, rectifier, or compounder, dealer or retailer, or other person or persons so offending, shall, for every such offence, forfeit and lose the sum of 200*l*.

The imperial gallon shall be applied to this act.

§ 147. The gallon in this act mentioned, shall for all the purposes of this act be deemed and taken to be a gallon imperial standard gallon measure.

All spirits, and the materials, utensils, and vessels of the distiller, subject to arrears of duty, penalties, and forfeitures.

§ 148. And in order to secure the duties of excise granted and imposed by this act, from time to time due and owing and in arrear, from any distiller or distillers, and for the enforcement of any penalty or penalties incurred by any distiller or distillers, for any offence or offences by him or them committed against this or any other law or laws of excise relating to spirits; it is enacted, that all worts, wash, low wines, feints and spirits, and all materials, preparations, utensils and vessels for the making thereof, in the custody or possession of such distiller and distillers, or in the custody or possession of any person or persons, to the use of or in trust for him, her, or them, or into whose hands soever the same shall come, and by what conveyance or title soever the same shall be claimed, shall be subject to, and the same are made chargeable with all the duties of excise in arrear and owing from time to time, from or by such distiller or distillers; and shall also be subject to all penalties and forfeitures incurred by such distiller or distillers, for any offence or offences by him, her, or them committed, against this or any other law or laws of excise relating to spirits; and it shall be lawful in all such cases to levy thereupon such duties, penalties, and forfeitures, and use such proceedings for the recovery or enforcement thereof, as might



over and above reasonable costs, charges, and expenses incurred by the prosecution. 6 G.4. c.80.

§ 150. All and every the powers, directions, rules, penalties, forfeitures, clauses, matters and things, which, in and by an act made in the parliament of *England* in the twelfth year of the reign of King *Charles* 2., intituled *An act for taking away the court of wards and liveries, and tenures* in capite *and by knights service, and purveyance, and for settling a revenue upon H. M. in lieu thereof,* or by any other law in force in *England* relating to H. M.'s revenue of excise, are provided and established, shall be (except so far as any of them may be altered by this act) practised, used, and put in execution, in and for the purposes of this act, as fully and effectually, to all intents and purposes, as if all and every the said powers, rules, directions, penalties, forfeitures, clauses, matters and things, were particularly repeated and re-enacted in this act. Powers of 12 C.2. c.24. or any law now in force relating to theexcise, extended to this act.

§ 151. This act, except where otherwise mentioned, shall extend to *England* only. Act to extend to England only.

But by stat. 9 *G.* 4. *c.* 44. § 4. All acts in force in *England* relating to foreign and colonial spirits, &c. are extended to the U. K. 9 G.4. c.44. English acts extended to U.K.

And by § 2. All penalties and forfeitures prosecuted by order of the commissioners of excise, shall be prosecuted and recovered according to 8 *G.* 4. *c.* 53. Recovery of penalties.

By § 1. All acts relating to the revenue of excise with respect to dealers in, and sellers of, foreign and colonial spirits, &c. in force at and immediately before 1825, are continued in force, except where subsequently altered, &c. Former acts continued.

By stat. 24 *G.* 2. *c.* 40. § 17. The justices within the limits of the head office of excise in *London* shall, once in every month, transmit to the clerk of the peace a certificate of all persons convicted before them for any offences against this or any former act relating to spirituous liquors, or for licensing the retailers thereof, who shall keep and enter the same among the records of the court; which certificate shall be evidence upon any information relating to spirituous liquors. 24 G.2. c.40. Conviction to be kept amongst the records of the sessions.

See also tit. **Alehouses**, Vol. I., and **Excise**, tit. **Ale and Beer**, *ante*, p. 119.

§ III. (17.) Starch, Hair Powder, and Stone Blue.

[10 Ann. c. 26. — 12 Ann. st. 2. c. 9. — 1 G. 1. st. 1. c. 2. — 4 G. 2. c. 14. — 23 G. 2. c. 21. — 24 G. 2. c. 40. — 26 G. 2. c. 32. — 5 G. 3. c. 43. — 10 G. 3. c. 44. — 19 G. 3. c. 40. — 24 G. 3. c. 40. — sess. 2. c. 41. — sess. 2. c. 48. — 26 G. 3. c. 51. — 27 G. 3. c. 13. — c. 31. — 28 G. 3. c. 37. — c. 73. — 42 G. 3. c. 93. — 43 G. 3. c. 69. — 52 G. 3. c. 139. — 1 & 2 G. 4. c. 25. — 3 G. 4. c. 25. — c. 27. — 6 G. 4. c. 81. — c. 111. — 9 G. 4. c. 44.]

By the 43 *G.* 3. *c.* 69. *Sched.* (A). For every pound avoirdupois weight of *starch*, of what kind soever, which shall be made in *G. B.*, to be paid by the maker thereof, 3¼*d.* 43 G.3. c.69. Duties.

And by stat. 6 *G.* 4. *c.* 111. Upon every cwt. of *starch*, imported into *G. B.*, 9*l.* 10*s.* 6 G.4. c.111.

By stats. 23 *G.* 3. *c.* 77., 43 *G.* 3. *c.* 69., and 3 *G.* 4. *c.* 25. For every pound weight avoirdupois of starch made in *G. B.* which shall be *consumed in G. B.* on or before 15th *July*, 1826, in Allowances.

preparing and finishing any manufactures from flax or cotton, for sale, except such as shall be consumed in finishing new linen in the piece, for sale, 1½*d.*

For every pound weight avoirdupois of starch made in *G. B.*, which shall be consumed in *G. B.* as aforesaid, in finishing new linen in the piece, for sale, 3*d.*

The allowances are to be paid to the manufacturer.

1&2 G.4. c.29.

By stat. 1 & 2 *G.* 4. *c.* 29. § 1. The like allowances of duty on starch made in *G. B.*, used in the manufacturing of flax or cotton, or in finishing new linen in the piece, for sale, shall be allowed for starch made in *Ireland*, and imported into *G. B.*

British gum to be deemed starch.

§ 4. Every article and commodity called *British* gum, or by any other name or description, being a preparation of or from starch, or of or from any of the materials from which starch is made in *G. B.*, or made in *Ireland*, and imported from thence into *G. B.*, shall be deemed starch, and liable to all the duties, allowances, &c. imposed and allowed upon starch, and to the several laws relating thereto.

19 G.3. c.40. 26 G.3. c.51. Who may be a maker of starch.

By stats. 19 *G.* 3. *c.* 40. § 1., and 26 *G.* 3. *c.* 51. § 20. No person, within the limits of the head office of excise in *London*, shall be a maker of starch, unless he occupies a tenement of 10*l.* a year or upwards, and for which he shall be assessed in his own name, and also pay to the parish rates; and elsewhere, unless he pay to church and poor; and where there are no rates to church and poor, then to the rates on houses and windows, on the like penalties as for making starch without entry.

24 G.3. sess.2. c.41. Starch-makers to be licensed. 6 G.4. c.81.

By stat. 24 *G.* 3. *sess.* 2. *c.* 41. § 1. 6, 7. Every maker of starch for sale shall take out a licence annually, under the penalty of 30*l.*

By stat. 6 *G.* 4. *c.* 81. All former duties on excise licences are repealed, and new duties imposed, *viz.* (*int. al.*) Upon every licence to be taken out by every starch-maker for sale, the annual sum or duty of 5*l.*

Note. — And see the several provisions of this statute respecting licences, penalties, &c. inserted *ante*, tit. Excise — Ale and Beer, p. 120. *et seq.*

24 G.3. sess.2. c.48. Places of making to be entered.

By stat. 24 *G.* 3. *sess.* 2. *c.* 48. § 1. No maker of starch shall erect, set up, alter, change, enlarge, or make use of any workhouse, storehouse, room, or other place, for the making, drying, or keeping of starch, or for keeping any flour or meal, or other materials, proper to be made into starch, or use any vat, trough, kiln, stove, box, utensil, or other vessel for the making of starch, without first giving notice in writing thereof, and of his name or place of abode, (unless such notice has been before given), at the next office for the said duties. And if such maker shall make default herein, he shall, for each offence, forfeit 200*l.*

5 G.3. c.43. Summoning offenders.

By stat. 5 *G.* 3. *c.* 43. § 19. A summons left at the place where discovery shall be made of such offence for using any workhouse, &c. without making entries, directed to the person prosecuted by his right or assumed name, shall be as effectual as if delivered personally, and directed to him by his proper name.

19 G.3. c.40. Rooms and vessels to be numbered.

By stat. 19 *G.* 3. *c.* 40. § 12. All rooms and places, vessels and utensils, shall be marked and numbered, at the discretion of the surveyor or supervisor, at the expense of the maker, on the penalty of 50*l.*

By stat. 10 *Ann. c.* 26. § 14. All flour, meal, and other materials for making starch, found in any private workhouse or other place, and all private utensils and vessels for making or keeping starch, for which no entry shall be made, or notice given, shall be forfeited, or the value thereof. 10 Ann. c. 26.

By stat. 24 *G.* 3. *sess.* 2. *c.* 48. § 3. Every starch-maker shall cause his *name* to be painted in large letters, of at least three inches in length, and shall put the same over the outward door, or in some conspicuous part of the front of his starch-house, with the addition of the word *starch-maker*, on penalty of 100*l.* 24 G. 3. sess. 2. Names, &c. to be put up.

And by stat. 10 *Ann. c.* 26. § 14. The officer shall at all times, by day or night, and if in the night with a constable or other peace officer, be permitted on request to enter the house, workhouse, warehouse, or other place used by any maker of starch; and by gauging or weighing the starch, and gauging the boxes and other utensils, or otherwise, to take an account of the quantity: and thereof shall make return in writing to the commissioners, leaving a true copy, if demanded, under his hand, with the maker; and if he shall not leave such copy (after demanded in writing, stat. 12 *G. c.* 28. § 30.), he shall forfeit 40*s.* 10 Ann. c. 26. Officers to enter and survey.

By stat. 19 *G.* 3. *c.* 40. § 6. Every maker, before he begins to empty or wash out any of the vats by him used in preparing or making of starch, shall give to the officer 12 hours' notice if within the bills, elsewhere 24 hours, of the particular time and hour when he intends to begin; and if he shall not begin at the hour, or within two hours after, the notice shall be void. And if he shall begin without giving such notice, he shall forfeit 100*l.* 19 G. 3. c. 40. Notice of emptying the vats.

By stat. 26 *G.* 3. *c.* 51. § 15. He shall (on the like pain), after he has begun to empty or wash out such vats, proceed and continue to empty or wash out the same without leaving off (except for one night), and shall finish the same within 48 hours from the time of beginning. 26 G. 3. c. 51.

And by stat. 19 *G.* 3. *c.* 40. § 7. 9. When the vats shall be emptied, and the water put into the frames or tubs, or other utensils, the said water shall remain therein undisturbed for 48 hours at least, and during that time the slimes and wash shall not be taken off the same, on pain that the maker shall forfeit 100*l.* 19 G. 3. c. 40.

By stat. 26 *G.* 3. *c.* 51. § 18. If the maker, whilst the starch is in operation and under water, mix any of the starch-waters of one making with those of another making, although in the presence of an officer, he shall forfeit 100*l.*; but slimes which have been entered as such for the space of 24 hours, may be mixed in the presence of an officer. 26 G. 3. c. 51. Mixing whilst in operation.

By stat. 19 *G.* 3. *c.* 40. § 8. When the maker shall be desirous to take off from the sour waters the slimes or wash so put into the frames or tubs, after the same shall have remained undisturbed for 48 hours, he shall give the officer 12 hours notice within the bills, (elsewhere 24 hours,) of the particular time and hour when he intends to take off such slimes and wash; and if he shall not begin the time, or within two hours after, the notice shall be void. And if he shall begin without giving such notice, he shall forfeit 100*l.* 19 G. 3. c. 40. Notice of taking the waters out of the tubs.

And by stat. 26 *G.* 3. *c.* 51. § 15. He shall (on the like pain), after he has begun to take off *the slimes* or wash from the sour waters, *continue to shift the said sour waters* until the whole is finished, 26 G. 3. c. 51.

6 G.3. c.51. and shall finish the same within 12 hours from the time of beginning.

§ 16. When the taking off the slime and wash from the sour waters is finished, and the green waters shall be put into the tubs or other utensils, they shall remain undisturbed for 24 hours; and that the officers may be able to ascertain when the said green waters were put into the tubs, every maker shall give notice in writing to the officer of the time he finished shifting such sour waters; on pain of 100*l.* in either case.

19 G.3. c.40. By stat. 19 *G.* 3. *c.*40. § 9. When the slime shall be taken off, and put into a tub or other utensil, the same shall remain therein for 24 hours; on pain that the maker shall forfeit 100*l.*

4 G.2. c.14. Boxes. By stat. 4 *G.* 2. *c.* 14. § 1. All makers of starch shall use regular square or oblong boxes only, for boxing and draining his green starch, before it is dried in the stove; on pain of 10*l.*

4 G.2. c.14. 19 G.3. c.40. And by stats. 4 *G.* 2. *c.* 14. § 1. and 19 *G.* 3. *c.* 40. § 11. Every maker shall, if within the bills, give 12 hours, (elsewhere 24 hours,) notice in writing to the officer, of his intention to put any green starch into such boxes; and he shall, in such notice, express the particular frame or tub from which he intends to box any starch; and when he shall begin to box, he shall continue to proceed to box the same, till the whole quantity in such frame or tub shall be boxed; and if he shall neglect to give such notice, or shall not proceed or continue after such notice given, he shall forfeit 200*l.*

1 G.1. st.1. c.2. By stat. 1 *G.* 1. *st.* 1. *c.* 2. § 6. If the charge be made by gauging it before it be dried in the stove, then every box of green starch, or starch before it be dried, containing 57 inches in length and 10 inches in breadth, and eight inches in depth, or in the whole 4560 solid inches, shall be esteemed 131 pounds avoirdupois of starch dried and perfectly made.

19 G.3. c.40. By stat. 19 *G.* 3. *c.* 40. § 10. If the officer shall miss any quantity of starch, of which an account had been taken by gauge, whilst the same was in the sour waters or slimes, and before put into the boxes, he may charge the maker according to such gauge

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ot begin at the time, or within two hours after, the notice shall e void. And if he shall begin without giving such notice, he all forfeit 100*l.* 19 G.3. c.40.

By stat. 26 *G.* 3. *c.* 51. § 19. If he be desirous to remove such arch from the stove, he shall give the like notice; and if he shall egin to remove any starch from the stove after the same is dried, ithout giving such notice, he shall forfeit 200*l.* 26 G.3. c.51. Removing from the stove.

By stat. 19 *G.* 3. *c.* 40. § 17. If the officer shall find any piece f starch drying of which no account had been taken in the box, ie same shall be deemed starch whereof no account had been ken, and the maker shall forfeit 100*l.* 19 G.3. c.40.

By stat. 26 *G.* 3. *c.* 51. § 1, 2. All starch before it be put into ıy stove or place to dry (except for crusting), shall be put in ıpers, and the maker shall, before he begins papering such starch ır drying, give to the officer 12 hours notice in writing if within ıe bills, elsewhere 24 hours, of the particular time and hour hen he intends to begin, and shall in such notice express the ımber of pieces intended to be papered, and where intended to e dried; and if he shall not begin to paper such starch at the me or within one hour, such notice shall be void. And every iece of starch, when papered shall be tied up with strings, cross- ıg each other on that side of the piece where the ends shall be ɔlded, and there shall be pasted thereon a label or piece of thin aper three inches long, and three inches broad at least, of a dif- erent colour, upon which the officer shall put a stamp or seal, in uch manner as to prevent opening such paper of starch without earing the said piece of stamped paper: And every maker offend- ng herein shall forfeit 100*l.* 26 G.3. c.51. To be papered and stamped.

By § 14. If any person shall forge or counterfeit any such tamp or seal, or the impression of the same on the papers, ie shall be guilty of felony without benefit of clergy (*a*); or hall knowingly sell any starch with such forged or counterfeit tamp, or seal, or impression, or affix any paper duly stamped to ny piece of starch other than that which was originally inclosed herein; he shall forfeit 500*l.* Forging or using forged stamps.

§ 11. When the paper wherein such starch is contained shall be roken or damaged, and the maker shall be desirous of having the ıme re-papered and re-stamped, he shall give, if within the bills, 12 ɔurs, elsewhere 24 hours, notice to the officer, who, on being ıtisfied that it was damaged by accident, may restamp the same ; before. Damaged stamps may be replaced.

§ 3. If any piece of starch papered and not stamped, or any ece not papered in manner as aforesaid, or any scrapings or loose arch shall be found in any stove or place for drying, the same ıall be forfeited; and the maker in whose possession the same is ınd shall forfeit 200*l.* But this shall not extend to pieces of arch put into the stove for crusting. Starch unstamped and scrapings.

§ 9, 10. Within one hour after such starch shall have been

(*a*) But by stat. 52 *G.*3. *c.*143. § 1. in all cases where any act committed in reach of, or in resistance to any of the laws for collecting the revenue, would, by ıe laws in force, subject the offender to suffer death, as guilty of felony without enefit of clergy, such act shall be deemed to be felony with benefit of clergy, and unishable only as such, unless *the same shall* also be declared felony without *enefit of clergy by this act.*

26 G.3. c.51. papered and stamped, all scrapings belonging thereto shall be weighed and taken account of and put into water, and shall not be mixed with other starch, or preparation for making starch then in operation, and when dissolved shall be strained through a sieve, and the officer shall take an account thereof as a green water; and the same shall not be again meddled with, until notice shall be given for boxing the same, as required by 4 *G.* 2. *c.* 14. and 19 *G.* 3. *c.* 40. And if any maker shall neglect to put such scrapings under water, and stir the same until dissolved, and strain the same within one hour after having been weighed and taken account of; or shall wilfully disturb or cause the same to be taken away without notice, he shall be deemed to have boxed starch without notice: or if he shall, in order to increase the quantity of scrapings before the same be weighed, mix starch of the same or any other making, or any flour, meal, or other thing with such scrapings, or wilfully cause any water or other liquid to be put to such scrapings, or by any means cause the same to be increased in weight, he shall forfeit 200*l.*

10 Ann. *c.*26. Maker to keep scales and weights. By stat. 10 *Ann.* *c.* 26. § 16. Every maker of starch shall keep sufficient and just scales and weights at the place where he makes his starch, and permit and assist the officer to make use thereof; on pain of 10*l.*

10 G.3. c.44. And by stat. 10 *G.* 3. *c.* 44. § 1. If he shall use insufficient scales or weights, he shall forfeit 100*l.*; but not to be prosecuted

28 G.3. c.37. both on this and the former act. And by stat. 28 *G.* 3. *c.* 37. § 15. The same shall be forfeited, and may be seized by any officer.

10 Ann. *c.*26. Removing before surveyed. By stat. 10 *Ann.* *c.* 26. § 19. No maker of starch shall remove any starch of which no account hath been taken by the officer from the place where it was made, without giving to the officer within the bills 24 hours notice, and elsewhere two days notice.

19 G.3. c.40. By stat. 19 *G.* 3. *c.* 40. § 19. If he shall remove any starch after it is dried out of the stove or drying-place before it has been weighed and taken account of by the officers; he shall forfeit 200*l.*

24 G.3. sess.2. c.48. Removing upwards of 28lbs. By stat. 24 *G.* 3. *sess.* 2. *c.* 48. § 4. No starch exceeding 28lb. shall be removed or carried by land or water, unless the word *starch* be painted or marked on the package in legible letters three inches long, on pain of forfeiture thereof, together with the chests, casks, sacks, or other package containing the same; and the boat or vessel, horses or other cattle, carts or other carriages, made use of in removing thereof.

Dealers receiving above 28lbs. § 5. If any dealer in starch shall receive any quantity exceeding 28lb. of starch, not marked as aforesaid, he shall forfeit 200*l.*

26 G.3. c. 51. Loose starch above 28lbs. and scrapings may be seized. By stat. 26 *G.* 3. *c.* 51. § 13. All starch not being papered and stamped as before directed, and all loose starch exceeding 28lb., and scrapings of starch, which shall be found in the possession of any maker of (or *dealer* in, 27 *G.* 3. *c.* 31. § 23.) starch, or any person for his use, or shall be found removing by land or water, shall be forfeited, and may be seized by any officer of the said duties; together with the package containing the same, and the boat or vessel, horses or other cattle, carts or other carriages, made use of in removing thereof; and such person shall forfeit moreover 10*s.* for every pound. But not to extend to starch made into hair-powder, or to any quantity taken out of the papers in the possession of any hair-powder maker, or blue-maker, or to any

uantity not exceeding 28lb. in the possession of any dealer in arch; nor to the returns from the sieves that may be in the possession of any maker of hair-powder. 26 G.3. c.51.

By stats. 4 *G.* 2. *c.* 14. § 4. and 23 *G.* 2. *c.* 21. § 34. If any officer the duties upon starch or of the customs, shall have any cause suspect that starch is privately making in any place, or hid or ncealed with intent to defraud the duties, then, upon oath made efore any commissioner or justice residing near, setting forth the round of his suspicion, such commissioner or justice may issue is warrant to authorise such officer by day or night, (but if in ie night in presence of a constable or other peace officer) to nter such suspected place, and seize and carry away the same, ith the materials, as forfeited, together with the boxes and other hings containing it; and unless the party make it appear that the luty has been paid, he shall forfeit 50*l.*; and if any person obstruct he officer, he shall forfeit 100*l.* 4 G.2. c.14. 23 G.2. c.21. Concealing or privately making.

By stat. 19 *G.* 3. *c.* 40. § 20. If any maker shall fraudulently conceal any starch, he shall forfeit 100*l.* 19 G.3. c.40.

By stat. 24 *G.* 3. *sess.* 2. *c.* 48. § 2. When any officer of excise shall discover that the making of starch is carried on in any private workhouse, and without notice given, and at the same time discover that any person shall knowingly assist in making starch in any private or unentered place, or shall be any ways concerned in carrying on such private making of starch, every person so offending shall forfeit 30*l.* over and above all penalties that the proprietor may be liable to. And any officer of excise and all other persons acting in his aid may arrest and convey him before a justice, who, on confession or proof on oath of one witness, may convict such offender, who shall immediately pay the said penalty, and on his refusing or neglecting to pay the same he shall be committed to the house of correction for six months, to be reckoned from the day of conviction, unless the penalty shall be sooner paid. And on conviction for a second offence, he shall forfeit 60*l.*, and on non-payment shall be committed in like manner for one year, unless the same be sooner paid. 24 G.3. sess.2. c.48. Assisting in private or unentered places.

By stat. 10 *Ann. c.* 26. § 17. The officer shall be permitted to take an account of the quantities of flour, meal, and other materials proper to be made into starch, that shall be in the possession of the maker; and if he shall miss any such materials, which he had taken an account of the last time he was there, and shall not on reasonable demand receive satisfaction what has become thereof, he may charge the maker with such quantity of starch as such materials so missing in his judgment would reasonably have made, not exceeding 25 pounds weight of starch for every bushel of such ingredients. 10 Ann. c.26. Officer to charge for materials missing.

By stat. 26 *G.* 3. *c.* 51. § 17. If any officer shall miss any starch, or materials for making thereof, of which a gauge had been taken while in the green water or slimes, and before put into the boxes, and shall not receive satisfaction what is become of the same, he shall charge the maker according to the gauge so taken, and such maker shall pay the duty so charged. 26 G.3. c.51.

By stat. 10 *Ann. c.* 26. § 20. All makers shall keep all starch that hath not been taken account of by the officer, separate from such as hath, for 24 hours after making, within the bills, and for 10 Ann. c.26. Starch unsurveyed to be kept separate.

26 G.3. c.51. papered and stamped, all scrapings belonging thereto shall be weighed and taken account of and put into water, and shall not be mixed with other starch, or preparation for making starch then in operation, and when dissolved shall be strained through a sieve, and the officer shall take an account thereof as a green water; and the same shall not be again meddled with, until notice shall be given for boxing the same, as required by 4 *G.* 2. *c.* 14. and 19 *G.* 3. *c.* 40. And if any maker shall neglect to put such scrapings under water, and stir the same until dissolved, and strain the same within one hour after having been weighed and taken account of; or shall wilfully disturb or cause the same to be taken away without notice, he shall be deemed to have boxed starch without notice: or if he shall, in order to increase the quantity of scrapings before the same be weighed, mix starch of the same or any other making, or any flour, meal, or other thing with such scrapings, or wilfully cause any water or other liquid to be put to such scrapings, or by any means cause the same to be increased in weight, he shall forfeit 200*l.*

10 Ann. c.26. Maker to keep scales and weights. By stat. 10 *Ann.* *c.* 26. § 16. Every maker of starch shall keep sufficient and just scales and weights at the place where he makes his starch, and permit and assist the officer to make use thereof; on pain of 10*l.*

10 G.3. c.44. And by stat. 10 *G.* 3. *c.* 44. § 1. If he shall use insufficient scales or weights, he shall forfeit 100*l.*; but not to be prosecuted

28 G.3. c.37. both on this and the former act. And by stat. 28 *G.* 3. *c.* 37. § 15. The same shall be forfeited, and may be seized by any officer.

10 Ann. c.26. Removing before surveyed. By stat. 10 *Ann.* *c.* 26. § 19. No maker of starch shall remove any starch of which no account hath been taken by the officer from the place where it was made, without giving to the officer within the bills 24 hours notice, and elsewhere two days notice.

19 G.3. c.40. By stat. 19 *G.* 3. *c.* 40. § 19. If he shall remove any starch after it is dried out of the stove or drying-place before it has been weighed and taken account of by the officers; he shall forfeit



antity not exceding 28lb. in the possession of any dealer in arch; nor to the returns from the sieves that may be in the possession of any maker of hair-powder. 26 G.3. c.51.

By stats. 4 *G.* 2. *c.* 14. § 4. and 23 *G.* 2. *c.* 21. § 34. If any officer the duties upon starch or of the customs, shall have any cause suspect that starch is privately making in any place, or hid or ncealed with intent to defraud the duties, then, upon oath made fore any commissioner or justice residing near, setting forth the ound of his suspicion, such commissioner or justice may issue s warrant to authorise such officer by day or night, (but if in e night in presence of a constable or other peace officer) to ter such suspected place, and seize and carry away the same, ith the materials, as forfeited, together with the boxes and other ings containing it; and unless the party make it appear that the ty has been paid, he shall forfeit 50*l.*; and if any person obstruct e officer, he shall forfeit 100*l.* 4 G.2. c.14. 23 G.2. c.21. Concealing or privately making.

By stat. 19 *G.* 3. *c.* 40. § 20. If any maker shall fraudulently nceal any starch, he shall forfeit 100*l.* 19 G.3. c.40.

By stat. 24 *G.* 3. *sess.* 2. *c.* 48. § 2. When any officer of excise all discover that the making of starch is carried on in any pri- te workhouse, and without notice given, and at the same time scover that any person shall knowingly assist in making starch in y private or unentered place, or shall be any ways concerned in rrying on such private making of starch, every person so offend- g shall forfeit 30*l.* over and above all penalties that the proprietor ay be liable to. And any officer of excise and all other persons ting in his aid may arrest and convey him before a justice, who, confession or proof on oath of one witness, may convict such fender, who shall immediately pay the said penalty, and on his fusing or neglecting to pay the same he shall be committed to e house of correction for six months, to be reckoned from the y of conviction, unless the penalty shall be sooner paid. And conviction for a second offence, he shall forfeit 60*l.*, and on on-payment shall be committed in like manner for one year, less the same be sooner paid. 24 G.3. sess.2. c.48. Assisting in private or unentered places.

By stat. 10 *Ann. c.* 26. § 17. The officer shall be permitted to ke an account of the quantities of flour, meal, and other mate- ls proper to be made into starch, that shall be in the possession the maker; and if he shall miss any such materials, which he d taken an account of the last time he was there, and shall not reasonable demand receive satisfaction what has become thereof, may charge the maker with such quantity of starch as such aterials so missing in his judgment would reasonably have made, t exceeding 25 pounds weight of starch for every bushel of ch ingredients. 10 Ann. c.26. Officer to charge for materials missing.

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By stat. 10 *Ann. c.* 26. § 20. All makers shall keep all starch at hath not been taken account of by the officer, separate from ch as hath, *for 24 hours after making*, within the bills, and for 10 Ann. c.26. Starch unsurveyed to be kept separate.

10 Ann. c.26. two days in any other part of *G. B.*, unless sooner taken account of, on pain of forfeiting *5l.*

19 G.3. c.40. Entry of starch made. (*a*) By stat. 19 *G.* 3. *c.* 40. § 3. Every maker of starch shall weekly make a true entry in writing at the next office of all the starch by him made within each week, setting forth the weight, and how much was made at each time, on pain of *50l.*: which entry shall be on oath of the maker, or his chief workman, according to the best of his knowledge and belief, before such officer as shall be appointed by the commissioners within the bills of mortality, and elsewhere before the collector and supervisor.

By stats. 10 *Ann. c.* 26. § 12. 19 *G.* 3. *c.* 40. § 5. No maker shall be obliged to go further, either to make entry or payment, than to the next market town.

19 G.3. c.40. Payment of the duties. By stat. 19 *G.* 3. *c.* 40. § 4. Every maker of starch shall, within one week after such entry, pay off the duties on pain of double duty. And no maker, after default in payment, shall sell or deliver out any starch until he hath paid off the duty; on pain of double the value of such starch.

23 G.2. c.21. Carrying coastwise. By stat. 23 *G.* 2. *c.* 21. § 29. Cockets granted for shipping starch, to be landed in any other part of the kingdom, shall express the quality, quantity, and weight, the mark of the package, and by whom made and sold, and where consigned; and if shipped without such cocket, it shall be forfeited and seized, together with the package.

Importation and exportation. By the same stat. § 27. & 42 *G.* 3. *c.* 93. § 19. No starch shall be *imported* otherwise than in some package, containing at least 224 pounds of neat starch, and stowed openly in the hold; on pain of being seized and forfeited, together with the package, and the master of the vessel to forfeit *50l.* (*b*)

26 G.2. c.32. But by stat. 26 *G.* 2. *c.* 32. § 8. On information brought against such master, (referring to 23 *G.* 2. *c.* 21. § 29.) he may detain the wages of the mariners till it be determined; and if it shall appear that the starch was put on board by any mariner without the



marked for exportation shall be found upon land, (except where packed up before shipped, or in removing from thence to be put on board,) the same shall be forfeited, and may be seized by any officer of excise or customs. 26 G.3. c.51.

By stat. 4 *G.* 2. *c.* 14. § 3. Any officer of excise or customs may seize any starch or hair powder, with the horses and package, that shall be found in any ship or vessel, or shall be carrying in any cart or waggon or other carriage, where he has good reason to suspect that it hath been privately made, or imported without payment of duty, or relanded after drawback; and shall in ten days exhibit an information before three commissioners of excise, or two justices residing near the place where the seizure is made; and if the party does not make it appear that the duty hath been paid, it shall be forfeited, together with the horses and package; and the offender shall likewise forfeit 5*l.* for every hundred weight. 4 G.2. c.14. Officers may seise suspected starch. Penalty.

And by stat. 23 *G.* 2. *c.* 21. § 30. the said officers may seize any starch, with the package, that shall be found in any vessel, cart, or other carriage, where they shall have good reason to believe that the same was made in some private workhouse, or clandestinely imported, or relanded after drawback; and if the party at the hearing of the information shall not make it appear that the duty hath been paid or secured, he shall forfeit 5*l.* for every hundred pounds weight, and so in proportion, and the goods and package also shall be forfeited. 23 G.2. c.21.

By stat. 42 *G.* 3. *c.* 93. § 18. Where goods shall be forfeited under any act relating to the excise, the packages containing the same, and the vessel, boat, cart, carriage, and cattle used in the removal thereof, shall be forfeited, and may be seized by any officer of excise. 42 G.3. c.93. When goods are forfeited by any excise-law, carriage, &c. also forfeited.

By stat. 23 *G.* 2. *c.* 21. § 31. If any foreign starch shall be unshipped with intention to be laid on land before entry and payment of the duties, or shall be landed again after shipping for exportation on debenture; the same, together with the package, vessels, boats, horses, and other cattle and carriages used in landing or conveying the same, shall be forfeited, and may be seized by any officers of the customs or excise; and the persons from whom the same shall be seized shall forfeit 5*l.* for every hundred pounds weight; and so in proportion. 23 G.2. c.21. Foreign starch unshipped before entry or relanded.

§ 32. If any person shall knowingly harbour, keep, or conceal, or knowingly permit to be kept, harboured, &c. any starch unlawfully imported, or relanded after shipping for exportation upon debenture; he shall, whether he claim any property therein or not, forfeit 50*l.* for every hundred pounds weight, and so in proportion, together with the goods and package. Persons harbouring starch unlawfully imported.

§ 33. Where any such starch shall be seized as forfeited, and no person shall claim the same in 20 days, if it be within the limits of the chief office of excise in *London*, the officer who made the seizure may cause notice, signed by the solicitor of excise, to be affixed at the *Royal Exchange*, of the time of proceeding to trial and condemnation of the same by the commissioners of excise; and if it be out of the said limits, then public notice shall be given by proclamation at the next market town, on the market day next after the said 20 days, of the day and place where the justices will proceed to trial and condemnation thereof; and the judgment thereon shall *not be liable to appeal*, nor be removed by certiorari. Not appearing to claim within 20 days.

.4. c.29.
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By stat. 1 & 2 *G.* 4. *c.* 29. § 2. All persons intending to export any starch made in *Ireland* to *G. B.*, shall, six hours before they shall ship the same, give to the proper officer of the customs in *Ireland* a notice thereof in writing, specifying the number of boxes or packages, and also the number of pieces or parcels, and net weight of the starch contained in each such boxes or other package, with the marks and numbers and the tare thereof, (every such external package having the word *Starch* permanently marked on the outside thereof in distinct letters of two inches in length at the least, and containing at the least 224 pounds net avoirdupois of such starch, and the starch therein being in pieces or parcels, and each piece or parcel enclosed in a separate paper, tied up with string, the ends of which shall cross each other on that side of the piece or parcel where the ends of the paper are folded,) and also specifying in such notice the quay or place where such goods are lying, and from which they are intended to be shipped, and the time when such shipment is intended to take place, and the name of the ship or vessel, and of the master or commander thereof, and of the particular port or place in *G. B.* to which such goods are intended to be exported; and such officer shall, upon the receipt of such notice, and the production of such goods, take an account of such starch, and of the marks and numbers of each of such boxes or other external packages, and shall ascertain the gross weight of each of such boxes or other external packages of starch, and compare the same with the particulars expressed in such notice; and the shipper or exporter shall thereupon nail, screw or fasten down each of such boxes or other external packages; and before shipping the same, enter into bond with sufficient sureties, to be approved of by the proper collector of the customs in *Ireland*, in a penalty calculated at the rate of 7*d.* *British* currency for every pound weight avoirdupois of the starch mentioned in such bond, with a condition that such starch shall be shipped and exported as aforesaid, and shall not be unshipped, unladed, or laid on land, or put on board any other ship

1 & 2. G. 4. c. 29.

such master or commander shall show the same to every officer of excise who shall board the said ship or vessel and demand the inspection of such certificate; and shall deliver such certificate to the proper inspector or port-surveyor of excise at the port or place in *G. B.* of such importation; and upon entry of such goods being made at such port or place, for payment of the duties payable thereon, the inspector, surveyor, or officer of excise appointed for that purpose, shall open every such box or package, and weigh and compare the contents thereof with such certificate, and if he deem it necessary, open the ends of the paper in which each piece or parcel of starch is enclosed and tied up, so as to satisfy himself that the same contains only starch made in *Ireland;* and if upon such weighing and examination he shall find the same to agree with the particulars specified in such certificate, and to be a fair and legal importation, he shall forthwith, after the duties payable on the importation of such starch shall be fully paid, make out and deliver to the master or commander of such ship or vessel a certificate of the due importation, landing, and examination of, and payment of duty on such starch, and shall, at the expense of the importer, transmit by post a duplicate of such last-mentioned certificate to the collector of the customs of the port or place in *Ireland* from which such starch was shipped; who, upon the receipt of such certificate, is, after comparing the same with such bond as aforesaid, to cancel such bond, if such certificate and bond are found to correspond and agree; and such importer is, after the delivery of such certificate, at his own expense, but in the presence of the proper officer of excise, strongly to affix with warm paste made with glue, on every piece or parcel of starch so papered and tied up, a label of thin paper, three inches long and three inches broad at the least, of a different colour to that in which the starch is wrapped; *viz.* if the starch is wrapped in blue or brown paper, the label shall be white; and if wrapped in white paper, the label shall be blue; and such label shall be affixed on that side of the piece of starch where the ends of the paper shall be folded, and in such manner as to prevent the opening thereof without tearing the label; and the proper officer shall thereupon stamp every label on every piece or parcel of such starch, with such stamp as shall be directed by the commissioners of excise.

to be produced, and on entry of goods, and the officer being satisfied as to the legal importation, a certificate thereof shall be transmitted to Ireland, that the bond may be cancelled.

Starch so imported shall be labelled and stamped as herein directed.

§ 3. If upon the proper officer of the customs in *Ireland* taking an account of and weighing any packages of starch produced to him as the goods specified in any such notice as aforesaid, shall discover the same not to agree with the particulars specified in such notice, or not according to the provisions of this act, every such notice shall be void, and the person and persons giving such notice shall forfeit the sum of 20*l. British* currency, to be recovered and applied as any other penalty by any law relating to H. M.'s customs in *Ireland;* and if any starch, for which any such bond shall be given as aforesaid, for the due shipment and exportation thereof to *G. B.*, shall not be landed in *G. B.* (shipwreck and other unavoidable accident excepted), and the duty payable thereon paid, and for which such a certificate thereof as is herein-before mentioned, shall not be delivered to the proper collector of customs in *Ireland* within three calendar months after the date of such bond, the penalty of such bond shall be forfeited; and *if any starch made in Ireland* shall, after the ex-

Notice to be void if packages do not agree in the particulars therein specified; and the person giving notice shall forfeit 20*l.*

If starch be not landed in G. B. (unavoidable accident excepted) and duty paid, &c. within three months, bond shall be forfeited.

1 & 2 G. 4. c. 29.

piration of one month after the passing of this act, be shipped in *Ireland* and imported into *G. B.* otherwise than as aforesaid, or without such *Irish* certificate as is hereinbefore provided for that purpose; or not agreeing therewith in the weight, quality, and description of the goods or packages therein specified, or for which such certificate is not received or delivered at the time of importation, or which is not duly entered, and the duties paid thereon; or on any piece or parcel of which the importer thereof refuses or neglects to affix such label as aforesaid; or of which any piece or parcel shall be removed or concealed from the proper officer, before the same has been marked or stamped thereon by such officer to denote the charge of duty, all such starch, with the packages containing the same, shall be forfeited, and shall be seized by any officer of excise; and if any package shall be imported as aforesaid as starch made in *Ireland*, which shall contain any foreign starch, or any other goods or commodity than starch made in *Ireland*, all such goods and packages shall be forfeited, and may be seized by any officer of excise; and the importer thereof, and every person concerned therein, shall over and above such forfeiture forfeit the sum of 100*l.*, or treble the value of such goods and packages, at the election of H. M.'s attorney-general, to be recovered, paid, and applied as any other penalty by any law relating to excise in *G. B.*

If regulations as to exportation and importation be not complied with, starch shall be forfeited.

If packages imported as starch made in Ireland contain foreign starch or other goods, the same shall be forfeited, and the importer shall also forfeit 100*l.* or treble the value.

Makers and sellers of hair-powder.

By stat. 12 *Ann. st.* 2. *c.* 9. § 20. No perfumer, peruke-maker, barber, or dealer in *hair-powder*, shall make, use, or offer to sale, any powder made of or mixed with alabaster, talc, plaster of Paris, whiting, lime, or other thing of the like nature (sweet scents only excepted), on pain of forfeiting the same, and 50*l.*

4 G. 2. c. 14.

By stat. 4 *G.* 2. *c.* 14. § 5. If any maker of *hair-powder*, or other such person, shall mix any powder or alabaster, plaster of Paris, talc, chalk, whiting, lime, or any other material (rice first made into starch, and sweet scents only excepted), with any starch or powder of starch to be made use of for making of hair-powder, and shall make any hair-powder with any of the said materials, or any

[redacted]

nto starch, for the making, mixing, or counterfeiting of hair- 4 G.2. c.14.
powder, he shall forfeit the same, and 10*l.*

By stat. 26 *G.* 3. *c.* 51. § 21. Every maker of *stone-blue* for sale 26 G.3. c.51.
hall make an entry in writing at the next excise-office of his name Makers of stone-blue.
nd place of abode, together with the workshop or place that shall
e made use of in making or keeping stone-blue, or materials for
naking thereof; on the penalty of 50*l.*

§ 22. 25, 26. Any officer, by day, upon request may enter such
orkshop or place, and examine every parcel of stone-blue, and
ake samples thereof, paying a reasonable price for the same; and
f any person shall refuse to permit him to enter such place, or hin-
ler him in taking such samples, or shall assault, molest, or hinder
ny officer in the execution of this act, he shall forfeit 50*l.*

§ 23. No maker shall begin to make any stone-blue for sale,
rom any flour, meal, or other ingredients (other than for colour-
ng the same), except starch for which the duties have been paid,
n pain of forfeiting thereof, (except such colouring,) together
vith the boxes, tubs, &c. containing the same, and also 100*l.*

§ 24. If any maker of stone-blue or hair-powder for sale, shall No starch to be received by stone-blue makers but in stamped papers.
eceive into his possession any starch in papers not stamped, or
ny loose starch or scrapings, he shall forfeit 10*s.* a pound; and
uch starch and scrapings shall be forfeited, and may be seized by
ny officer. And if any maker of stone-blue or hair-powder shall
eep above 28 lbs. of starch or hair-powder in any unentered place,
he same shall be forfeited, and also 50*l.*

All the said forfeitures shall be sued for, levied, and mitigated, Power of the justices.
s by the laws of excise, or in the courts at *Westminster*; and be
listributed half to the king, and half (and by the 10 *Ann. c.* 26.
alf with full costs) to the prosecutor. *Vide* 10 *Ann. c.* 26. § 29.
—23 *G.* 2. *c.* 21. § 27. — 24 *G.* 2. *c.* 40. § 29. — 19 *G.* 3. *c.* 40.
22. — 24 *G.* 3. *c.* 48. § 16. — 26 *G.* 3. *c.* 51. § 26. — 43 *G.* 3.
. 69. § 4.

By stat. 24 *G.* 3. *c.* 48. § 6. If the maker shall obstruct such 24 G.3. c.48.
fficer in the execution of his duty, he shall forfeit 100*l.* Obstructing officer.

By stat. 23 *G.* 2. *c.* 21. § 35. Where any starch shall be seized 23 G.2. c.21.
or nonpayment of duties, or non-entry, and it shall be disputed Proof to lie on the claimer.
whether such payment or entry were made or not, the proof shall
ie on the claimer, and not on the officer.

§ 37. If the party find himself aggrieved by the judgment given Appeal.
y the justices, in case of condemnation of goods seized under this
ct, he may appeal to the next quarter sessions, whose judgment
hall be final (except in the case before-mentioned, where no person
hall claim the goods seized within 20 days).

§ 38. The commissioners or justices may mitigate the penalties Mitigation.
nd forfeitures under this act, as they shall think fit, the reasonable
osts and charges of the officers, as well in making the discovery
s in the prosecution, being allowed above such mitigation, and so
s the penalty be not reduced to less than one-fourth part thereof,
bove the said costs and charges.

§ 40. No writ of *certiorari* shall supersede execution, or other
roceedings under this act.

And by stat. 10 *Ann. c.* 26. § 23. & 28 *G.* 3. *c.* 37. § 21. All 10 Ann. c.26.
tarch, materials, and utensils, in custody of the maker, or of any 28 G.3. c.37.
erson to his use, shall be liable to all arrears of the duty and Utensils liable.

penalties; and such proceedings may be had thereupon as if the debtor or offender were the lawful owner.

9 G. 4. c. 44. Recovery of penalties, &c. Mode of proceeding.

By stat. 9 *G.* 4. *c.* 44. § 2. All penalties and forfeitures imposed by any act or acts relating to the revenue of customs, or excise, which by law the officers of excise are authorised to prosecute, and which the commissioners of excise shall order to be prosecuted, shall be so prosecuted, sued for, recovered, levied, mitigated, and applied, &c. as by 7 & 8 *G.* 4. *c.* 53. *Vide ante*, p. 60. *et seq.*

§ III. (18.) Stone Bottles.

[52 G. 3. c. 139. — 57 G. 3. c. 32. — c. 119. — 6 G. 4. c. 111. — 9 G. 4. c. 44.]

7 G. 3. c. 32. Duties.

By stat. 57 *G.* 3. *c.* 32. Certain duties are granted upon stone-bottles and drawbacks allowed on exportation.

6 G. 4. c. 111. Customs.

By stat. 6 *G.* 4. *c.* 111. All former duties of customs are repealed, and new duties imposed. *Vide ante*, p. 58.

57 G. 3. c. 32. Regulating the dimensions of stone-bottles.

By stat. 57 *G.* 3. *c.* 32. § 3. Every bottle or other vessel which may be used as or for a bottle, made of earthen or stone ware, or of earth or clay alone, or mixed with any other material, which shall not exceed two quarts in measure, or the mouth or neck of which shall not exceed in diameter, in the narrowest part of the inside thereof, three inches, and no other, shall be deemed to be a stone-bottle within the meaning of this act.

Penalty not to be made of less size than three ounces in measure of distilled water, on penalty of 50*l.*

§ 7. No maker of earthen or stone ware, or of bottles or other vessels made of earthen or stone ware, or of earth or clay alone, or mixed with any other material, shall make of earthen or stone ware, or of earth or clay alone, or mixed with any other material, any bottle or vessel which may be used as or for a bottle, of less size or content than three ounces in measure of distilled water; on pain of forfeiting 50*l.*

57 G. 3. c. 119.

By stat. 57 *G.* 3. *c.* 119. § 1. All stone-bottles made in *G. B.*,

due entry with the collector of excise in the place where such shall be so imported, of all such on board of such ship belonging to him, &c., and shall then and before the landing pay the duty, and shall also, within such 20 days, land all such bottles, on pain to forfeit such bottles, and which may be seized by any officer of excise. 52 G.3. c.139.

§ 4. Every maker, before he shall make any stone-bottles, shall make a true and particular entry in writing of every house, workhouse, millhouse, warehouse, shed, shop, room, and place by him used, or intended to be used for the wetting, softening, grinding, preparing, mixing, or keeping of any clay, earth, or other materials commonly used or fit to be used in making stone-bottles, or in the making, hardening, drying, baking, burning, or keeping of such bottles; and also of every cone, kiln, stove, vat, cistern, mill, lathe, trundle, or other machine, implement, vessel, or utensil by him kept or used, or intended to be used in the making, manufacturing, turning, hardening, drying, baking, or burning of such bottles, at the office of excise within the limits whereof such place, utensil, &c. &c. shall be situate; on pain of forfeiting 100*l.* for such place or utensil not so entered, with all the stone-bottles and other materials found therein, which may be seized by any officer of excise. Entry of places

§ 6. The officers of excise, at all times between 5 in the morning and 11 at night, without a constable, and between 11 at night and 5 in the morning, in the presence of a constable, may enter into the houses, workhouses, millhouses, warehouses, sheds, shops, rooms, and other places entered or used by any maker of stone-bottles, and by weighing or otherwise take an account of the weights, kinds, and quantities of the stone-bottles made or found in the possession of such maker. Officers to enter and take an account.

§ 7. Every maker being desirous to put stone-bottles in any kiln, stove, or oven for baking or burning the same, shall give to the officer under whose survey he shall be six hours' previous notice in writing of such his intention, specifying the particular kiln, &c. in which such stone-bottles are to be deposited, and the hour at which it is intended to deposit the same; and if any such maker shall neglect to begin so to deposit such stone-bottles in the kiln, &c. within one hour after the time mentioned in the notice, such notice shall be void, and such maker shall give a fresh one; and if any maker shall put stone-bottles into any kiln, &c. without having given such notice, he shall forfeit 50*l.*

§ 8. Before any maker shall begin to close or stop up any kiln, &c. containing stone-bottles, he shall deliver to the officer a declaration in writing of the names by which the bottles of each particular kind are commonly known, with the reputed measure of such bottles of each size, and the number thereof contained in each such kiln, &c., on pain of forfeiting 50*l.*: Provided, that no maker shall incur the said penalty if the number of bottles of any particular kind specified in any declaration shall not vary more than at the rate of 5 *per centum* from the true numbers. Declaration of number, size, &c. of stone-bottles before stopping up kiln, &c.

§ 9. When any maker shall be desirous to light fire to heat his kiln, stove, or oven, into which stone-bottles are intended to be put for baking or burning, he shall give to the officer six hours' notice *in writing of his intent*: Provided that no maker shall kindle Makers to give notice for lighting fires to heat kilns, &c.

: G.S. c.139. any fire for the purpose aforesaid, till after the expiration of one hour from the time when the depositing the stone-bottles shall be finished; and if any such maker shall so light any fire for that or any other purpose till after one hour as aforesaid, he shall forfeit 50*l.*; and if he shall neglect to light such fire within one hour after the time mentioned, such notice shall be void, and he shall give a fresh one; and if any such maker shall so light fire without previous notice, he shall forfeit 50*l.*

§ 10. Every maker shall provide a convenient weighing-room in or adjoining to each kiln, &c.

lakers re-uired to keep :ales and 'eights, &c. 'enalty.

§ 11. Every maker shall keep sufficient and just scales and weights at the place where he shall manufacture stone-bottles, and permit any officers of excise to use the same for weighing and taking an account of and re-weighing the stone-bottles in the possession of such maker; upon penalty, for every neglect and refusal, of forfeiting 100*l.*; and if in the weighing or re-weighing he shall use or suffer to be used any false or insufficient scales or weights, or practise any contrivance by which any such officers may be prevented or hindered in taking the true weight of any stone-bottles, such maker shall forfeit 100*l.* with all such scales and weights, which may be seized by any officer of excise.

Makers to give notice to officer before drawing any stone-bottles from kiln, &c.

§ 12. Every maker desirous to draw stone-bottles out of any kiln, oven, &c. shall, 12 hours before the beginning, give to the officer a notice in writing of his intention, specifying the particular kiln, &c. and the time and hour at which it is intended to draw the same; and if any officer shall attend at the time mentioned in the notice, such maker shall, so soon as he shall so attend, immediately, with a sufficient number of his workmen, begin to draw the bottles out of such kiln, &c. and without unnecessary delay, and with a proper number of his workmen or servants, proceed until the whole shall be drawn out.

Stone-bottles when drawn to be conveyed to

§ 12. And every maker, so soon as any stone-bottles not exceeding two quarts measure shall be drawn out, shall convey the same directly into the weighing-room, and forthwith place the



52 G.S. c. 139.

§ 13. In weighing stone-bottles, the turn of the scale shall be in favour of the crown, and in lieu thereof there shall be allowed to the maker 1 lb. upon each 100 lbs. so weighed. — Allowance for turn of scale.

§ 14. All stone-bottles chargeable with duties shall be weighed and charged so soon as the same shall be baked or burned; and if any maker, or his workmen, or other person, shall molest or obstruct any officer in weighing or taking such account, he or they shall forfeit 100*l.* — Stone-bottles charged with duty as soon as baked. Obstructing officers.

§ 15. Every maker whose stone-bottles have been weighed by any officer, shall, for six hours after, keep such stone-bottles in the weighing-room, in the same state and position in which they were left by the surveying officer, unless sooner re-weighed by the surveyor or supervisor, to the end that he may have an opportunity to re-weigh the same, on pain of forfeiting 100*l.*; and, if upon the re-weighing any additional weight shall be found, such additional weight shall be charged with the duties. — Stone bottles re-weighed, and makers shall not remove them from weighing-room for six hours.

§ 16. Every maker shall, when required by the officer, surveyor, or supervisor, with a sufficient number of his servants, assist the officer in weighing, and the surveyor or supervisor in re-weighing all his stone-bottles, on pain of forfeiting 100*l.* — Makers, &c. to assist officers in weighing, &c.

§ 17. If any maker shall convey away stone-bottles not exceeding two quarts measure from any kiln, &c. before the proper officer shall have weighed the same, or shall neglect to produce such bottles to the officer that he may weigh them; or if any person shall hide or conceal any stone-bottle, to defraud H. M. of the duties, every maker or person so offending shall forfeit 100*l.* — Makers removing bottles from kilns, &c. before weighed. Penalty.

§ 18. Every maker shall keep all stone-bottles which shall not have been weighed by the officer separate from those that have been weighed, upon pain of 100*l.* — Stone-bottles not weighed kept separate.

§ 19. Every maker shall once in every six weeks make a true entry in writing at the office of excise, within the limits whereof such stone-bottles shall be made, of all the stone-bottles not exceeding two quarts measure by him made within such six weeks; and such entries shall contain the numbers and sorts thereof, with the reputed measures of each particular sort, with the aggregate weight of the total number so made within such six weeks, on pain of forfeiting 100*l.*; which entry shall be verified upon oath by the maker or by his chief workman employed in making the same, which oath shall be administered by the proper collector, surveyor, or supervisor, without fee: Provided, that no such maker shall be obliged to go further than the market town next to the place where such stone-bottles shall be made for the making of any such entry. — Makers to make entry every six weeks of stone-bottles manufactured. Penalty. Proviso.

§ 20. Every maker shall, within six weeks after he shall make or ought to have made such entry, pay off the duties for such stone-bottles, upon pain of forfeiting double such duties. — Makers to clear off duties.

§ 21. Any officer of excise may take a sample of any stone-bottles or earthen-ware, either baked or unbaked, or burnt or unburnt, in the possession of any maker, paying for the same, if demanded, the wholesale price thereof; and if any maker shall refuse to permit the officer to take such sample, upon his tendering such price for the same, he shall forfeit 100*l.* — Officers may take samples of stone-bottles. Penalty.

§ 22. If any stone-bottles shall be fraudulently concealed in any place whatsoever, with intent to defraud H. M., the same shall — Stone-bottles concealed forfeited, with package, &c.

2 G. 3. c. 132.

be forfeited, together with the packages, and they may be seized by any officer of excise, and the person in whose custody the same shall be found shall forfeit 50*l.*; and if any officer shall have cause to suspect that stone-bottles shall be so concealed in any place whatsoever, then, if such place be within the limits of the chief office of excise, upon oath made by such officer before two of the commissioners of excise, or before one justice of the county, &c. where such place shall be in any part of *G. B.*, upon oath by such officer before such justice where such officer shall suspect the same to be concealed, setting forth the ground of his suspicion, it shall be lawful for the said commissioners, or the justice, as the case may require, if he or they shall judge it reasonable, by special warrant to authorise such officer by day or by night, (but if in the night, in the presence of a constable,) to enter every such suspected place, and to seize and carry away all such stone-bottles as he shall then find so forfeited, together with the packages containing the same.

Penalty.

Suspected place searched.

Makers making use of concealed place.

§ 25. If any maker of stone-bottles shall make use of any private or concealed cone, kiln, stove, or oven, or any private or concealed vat, cistern, mill, lathe, trundle, or other machine, implement, utensil, or place whatsoever, other than such as are known and entered, he shall forfeit 100*l.*

Penalty.

Stone-bottles and materials answerable for duties.

§ 26. All stone-bottles and all the materials and implements and utensils for the making thereof in the possession of any maker, or of any person to the use of or in trust for him, shall be chargeable with all the duties in arrear and owing by such maker, and shall also be liable to all penalties and forfeitures incurred by him, or the person using any such workhouse or place; and such duties and penalties may be levied as if the debtor or offender were the owner.

Makers not to act as justices in execution of

§ 27. No person being a maker of stone-bottles, or interested in the trade of making or dealing therein, shall act as a justice in any matter concerning the execution of this act.

[redacted]

be to the king, and the other to him who shall inform, discover, or sue for the same. 52 G. 3. c. 139.

And by stat. 9 *G.* 4. *c.* 44. § 2. All penalties and forfeitures imposed by any act or acts relating to the revenue of the customs or excise, are to be levied, &c. according to the provisions of 7 & 8 *G.* 4. *c.* 53. (*Vide ante*, p. 60. *et seq.*) 9 G. 4. c. 44.

By stat. 57 *G.* 3. *c.* 32. § 5. The duties and drawbacks hereby imposed and granted shall be raised and paid, in the like manner as the duties repealed; and every fine and forfeiture for any offence against the acts for securing the revenue of excise shall be applied to the duties and drawbacks in this act. 57 G. 3. c. 32. Duties, how to be levied.

§ III. (19.) Sweets.

[7 & 8 W. 3. c. 30. — 10 & 11 W. 3. c. 21. — 6 G. 1. c. 21 — 10 G. 2. c. 17. — 42 G. 3. c. 93. — 55 G. 3. c. 177. — 6 G. 4. c. 37. — c. 81. — c. 111. — 9 G. 4. c. 44.]

By stat. 6 *G.* 4. *c.* 37. All former excise duties, and drawbacks upon sweets or made wines are repealed, and new duties imposed, the whole being placed under the management of the commissioners of excise, and the duties assimilated throughout *G. B.* and *Ireland.* 6 G. 4. c. 37. Duties of excise.

By stat. 6 *G.* 4. *c.* 111. All former duties and customs are repealed, and new duties imposed. (*Vide ante*, p. 58.) 6 G. 4. c. 111. Customs.

By stat. 6 *G.* 4. *c.* 81. All former duties on excise licences are repealed, and new duties imposed upon all licences required to be taken out annually by the several persons therein mentioned, viz. (*inter alios*) 6 G. 4. c. 81. Licences.

Every maker of any kind of sweets, or made wines for sale, 2*l.* 2*s.*

Every retailer of sweets, or made wines, 1*l.* 1*s.*

§ 11. Provides for sales at fairs and races. And that alehouse-keepers shall not be licensed as makers or retailers of sweets, or made wines, without first producing their alehouse licences.

§ 14. No licence for the sale of sweets, or made wines, to be drank in or upon the house or premises where sold, shall be granted to any person who shall not have and produce a licence for the sale of beer, &c. by retail; and if granted, the same shall be void, and the party liable to penalties for selling without a licence.

Note.—And see the several other provisions of this stat. as to the licences, penalties, &c. inserted at length. (*Ante*, tit. Excise—Ale and Beer, p. 120. *et seq.*)

By stat. 10 & 11 *W.* 3. *c.* 21. § 5. Every person who shall sell or use any materials used in the making of wines, and in whose custody any quantity exceeding two gallons shall be found, shall be deemed a maker of sweets for sale. 10 & 11 W. 3. c. 21. Who shall be deemed a maker.

By stat. 55 *G.* 3. *c.* 177. § 4. Every person who shall have in his custody any liquors made by infusion, fermentation, or otherwise, from fruit or sugar, or from fruit or sugar mixed with any other materials, commonly called *sweets* or *made wines*, exceeding 100 gallons shall be deemed a maker of sweets or made wines for sale, and subject to the survey of the officers of excise. 55 G. 3. c. 177. Persons having in possession sweets exceeding 100 gallons, deemed makers.

By stat. 10 *G.* 2. *c.* 17. § 4. Every maker of *sweets* for sale shall first give notice to the excise officers of his name and place of abode, and of the rooms and places he intends to use for making or *keeping of sweets or made wines*; on pain of 20*l.* 10 G. 2. c. 17. Notice to be given.

55 G.3. c.177. Makers to give notice to the officer of excise before any sweets are drawn off, and to state the quantity.

By stat. 55 *G.* 3. *c.* 177. § 1. Every maker of sweets or made wines for sale shall, before he begin to draw off any sweets or made wine from any steep or utensil in which the same shall have been made, give to the officer of excise, under whose survey such maker shall then be, six hours' notice in writing within the limits of the chief office of excise in *London*, and twelve hours' notice in writing in other places in *G. B.*, of his intention to draw off; and of the time when, and the particular steep or utensil from which the same are to be drawn off, and the quantity thereof; and such officer shall, if he shall deem it expedient, attend to see such sweets or made wine so drawn off; and if such officer shall attend, the sweets or made wine shall be, with all diligence and despatch, drawn off in his presence; and if any such maker shall draw off any sweets or made wine without giving such notice, or shall neglect to draw off with all due diligence and despatch, on the officer's attendance, such maker shall forfeit 50*l.*, with all such sweets or made wine drawn off without such notice.

Penalty for neglect.

Makers not subject to penalty for not specifying quantity in notice, if the whole of the quantity contained in the vessel be drawn off.

§ 2. Nothing herein-before contained shall extend to subject any maker to the said forfeiture, for not specifying in his notice the quantity to be drawn off, in case the whole of the sweets or made wines in the steep or utensil mentioned in such notice shall be intended to be drawn off; and such maker shall have specified in the notice that the whole are so to be drawn off; and if the whole shall be drawn off with due diligence and despatch, and the pressing out of the remains from the fruit finished within seventy-two hours from the commencement thereof.

Makers not to send out sweets in less quantity than casks of 15 gallons.

§ 3. No maker of sweets or made wines, other than mead, for sale, shall or send out any liquor, made by infusion, fermentation, or otherwise, from fruit or sugar, or from fruit or sugar mixed with other materials, commonly called *sweets* or *made wines*, in any less quantity than in a whole cask containing fifteen gallons, on pain of forfeiting 50*l.*

7 & 8 W.3. c.30. Concealing sweets.

And by stat. 7 & 8 *W.* 3. *c.* 30. § 16. If any maker of *sweets* for sale shall conceal any sweets from the view of the gauger, he shall for every barrel forfeit 40*s.*

6 G.1. c. 21. Permit for removal after duty paid.

By stat. 6 *G.* 1. *c.* 21. § 22. If any *sweets*, having paid the duty, shall be intended to be removed, the excise officer shall on request give a certificate under his hand, expressing the quantity and quality, and from whom and to whom they are to be sent; and if any maker shall otherwise remove them, or vintner receive them, he shall forfeit 10*s.* a gallon, and also the liquor and casks.

42 G.3. c.93. Seizing packages, vessels, carriages, &c.

By stat. 42 *G.* 3. *c.* 93. § 18. Where goods are forfeited under any act relating to the excise, the packages containing the same, and the vessel, boat, cart, carriage, and cattle used in the removal thereof, shall be forfeited, and may be seized by any officer of excise.

9 G.4. c.44. Penalties, &c. how to be recovered.

By stat. 9 *G.* 4. *c.* 44. § 2. All penalties and forfeitures, relating to the excise or customs, are to be recovered, &c., according to the provisions of the stat. 7 & 8 *G.* 4. *c.* 53. (*Vide ante*, p. 60. *et seq.*)

§ III. (20.) Tobacco and Snuff.

[1 G. 1. st. 2. c. 46. — 5 G. 1. c. 11. — 8 G. 1. c. 18. — 12 G. 1. c. 28. — 5 G. 3. c. 43. — 29 G. 3. c. 68. — 30 G. 3. c. 40. —

43 G. 3. c. 69. — c. 134. — 47 G. 3. st. 1. c. 25. — 48 G. 3. c. 84. — 52 G. 3. c. 159. — 53 G. 3. c. 88. — 1 & 2 G. 4. c. 109. — 4 G. 4. c. 69. — 6 G. 4. c. 81. — c. 111. — 7 G. 4. c. 48. — 9 G. 4. c. 44.]

Note. — The stat. 29 *G.* 3. *c.* 68. regulating the importation, exportation, and manufacture of tobacco and snuff, being of great length, it is thought sufficient in this place to give a short account thereof only; and also of stat. 30 *G.* 3. *c.* 40. made to explain and amend the same; and for further information to those whom it may materially concern, to refer them to the acts themselves.

29 G.3. c 68. Importation.

By stat. 29 *G.* 3. *c.* 68. § 5, 6. No tobacco shall be imported but from *America*, on forfeiture thereof, with the vessel and her contents; except from *Spain*, *Portugal*, and *Ireland*, from which places it may be imported under certain regulations. But by stat. 59 *G.* 3. *c.* 74. § 1. tobacco may be imported from any port or place within the limits of the charter granted to the East India Company, in any *British* ship or vessel owned, registered, and navigated according to law: Provided, that such tobacco shall not be imported in any cask, chest, case, or other package which shall not contain at the least 100lbs. weight net of tobacco, not packed in bags or packages within any such cask, nor separated within any such cask, or in any manner whatever, on pain of forfeiting all such tobacco, with the casks, chests, cases, and other packages containing the same, and also the ship, vessel, or boat in which the same shall be so imported or brought, with her guns, furniture, ammunition, tackle and apparel; which may be seized by any officer of the customs or excise: provided that such tobacco shall be liable to all the provisions of the acts now in force regulating the trade to and from the places within the limits of the charter granted to the E. I. C.

59 G.3. c.74. Tobacco may be imported from the East Indies in British vessels; but in casks containing not less than 100lbs. and not in bags or packages within such casks, on pain of forfeiture.

29 G.3. c.68. Tobacco shall be exported in vessels of 70 tons or upwards.

By stat. 29 *G.* 3. *c.* 68. § 47. No tobacco, either manufactured or unmanufactured, shall be entered or shipped for exportation to any parts beyond the seas, *Ireland* excepted, in any ship or vessel whatever, unless such ship or vessel shall be of the burden of 70 tons or upwards; and if any officer of customs or excise shall apprehend that any such vessel is of a less burden, he may detain her, with the cargo, until he cause her to be measured according to the rules prescribed by stat. 26 *G.* 3. *c.* 60.: and if it shall appear that such vessel is of the burden of 70 tons or upwards, the officer shall not be liable to any damages for such detention; and if the master shall clear out his vessel as of a proper burden, and she shall not be of the burden of 70 tons, he shall forfeit 100*l.*

Penalty.

4 G.4. c.69. Tobacco may be exported and imported between G.B. and Ireland in ships not less than 70 tons.

By stat. 4 *G.* 4. *c.* 69. § 21. It shall be lawful to carry and export from *G. B.* to *Ireland*, and from *Ireland* to *G. B.*, and to import into *Ireland* from *G. B.*, and into *G. B.* from *Ireland*, any tobacco, either manufactured or unmanufactured, in any ship or vessel of the burden of 70 tons or upwards, subject to all such rules, regulations, restrictions, penalties, and forfeitures, as are imposed upon such importation and exportation respectively, in vessels of the tonnage in which such tobacco may be exported or imported, under any act or acts in force before the passing of this act: Provided, that if any such tobacco shall be so exported or imported in a vessel *of less burden than* 70 tons, all such tobacco,

If exported or imported in ves-

G.4. c.69.

ls of less bur-
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and also the ship, vessel, and boat, with their materials and furniture, shall be forfeited, and may be seized by any officer of the customs or excise.

9 G.3. c.68.
mportation of
bacco or snuff
what vessels,
ackages, quan-
ties, &c.

By stat. 29 *G.* 3. *c.* 68. § 7, 8, 9, 10, 11. No tobacco or snuff shall be imported in any vessel of less burden than 120 tons; nor any tobacco-stalks, tobacco-stalk flour, or snuff-work, in any vessel whatever; nor any tobacco or snuff in any hogshead, cask, or other package less than 450 lbs. on the like penalty; except loose tobacco for the crew or passengers, not exceeding 5 lbs. for each person; nor shall the vessel be forfeited if proof be made from the smallness of the quantity that such tobacco or snuff was on board without the knowledge of the owner or master, and without any want of reasonable care on their part. And in each of the above cases, the tobacco and snuff, together with the packages, and also the ship, vessel, &c. in which imported, may be seized by the officers of customs or excise. See also stat. 30 *G.* 3. *c.* 40. § 3.

7 G.3. st.1.
25.

By stat. 47 *G.* 3. *st.* 1. *c.* 25. § 1. The preceding restriction is repealed as to the packing and dividing tobacco within the outer hogshead, cask, chest, or case.

And by § 2. the outer hogsheads, &c. must contain 450 lbs. net, at the least, of tobacco.

9 G.3. c.68.
t what port.

By stat. 29 *G.* 3. *c.* 68. § 14. No tobacco or snuff shall be imported except at *London*, *Bristol*, *Liverpool*, *Lancaster*, *Cowes*, *Falmouth*, *Whitehaven*, and *Hull*; and by 31 *G.* 3. *c.* 47. § 3. *Newcastle-upon-Tyne*, on the like forfeiture.

G.4. c.111.
G.4. c.48.
Duties.
Customs.
Drawback.

By stats. 6 *G.* 4. *c.* 111. and 7 *G.* 4. *c.* 48. in lieu of all former duties of customs, new duties are granted upon tobacco and snuff imported: and a drawback is allowed upon tobacco manufactured in the U. K. at or within two miles of any port into which tobacco may be imported, made into shag, roll, or carrot tobacco.

3 G.3. c.69.
Excise.

By stat. 43 *G.* 3. *c.* 69. The former excise duties are repealed, and other duties granted in lieu thereof.

Note.—Tobacco and snuff are also subject to annual duties by

as with the said 5*l.* shall amount to the duty before directed to be paid, according to the quantity of tobacco and snuff-work weighed for manufacture within the preceding year - - - - - - - - - 5 0 0 — 6 G.4. c.81.

And every *dealer* in or *seller* of tobacco and snuff shall take out a licence in like manner, for which he shall pay 5*s.* — Dealers to be licensed.

Note.—And see the several other provisions of this act as to the licences, fines, penalties, &c. &c., cited at length, *ante*, tit. Ale and Beer, p. 120. *et seq.*

By stat. 9 *G.* 4. *c.* 44. § 1. All acts relating to the revenue of excise in force at and immediately before 1825, with respect to dealers in and sellers of tobacco and snuff, &c., and to the taking and keeping account of and survey of all stocks of such commodities in the possession of such traders respectively, and to the manufacture of tobacco and snuff, and the granting of permits for the removal of such commodities, shall remain in force, and be executed by the commissioners of excise, and their officers (except in certain cases, and so far as any such act or acts, or any part or parts thereof have been repealed or altered by any subsequent act). And all powers, regulations, &c. relating to the licences to be taken out by the dealers in and sellers of such commodities, and to the survey of their stocks, and the granting of permits for removing such commodities, contained in any former act or acts, may be put in force by the commissioners of excise and their officers (except as aforesaid). — 9 G.4. c.44. Excise laws in force before 1825, continued.

By stat. 29 *G.* 3. *c.* 68. § 73. Persons licensed as manufacturers, who shall not at any time sell tobacco in a less quantity than 4 lbs. nor snuff in less than 2 lbs. need not be licensed as dealers. — 29 G.3. c.68. Exception.

§ 155. Every person who shall manufacture tobacco, tobacco-stalks, or returns of tobacco, or manufacture or flatten any tobacco-stalks, or cut the same into *Spanish*, shall be deemed a *manufacturer of tobacco.* And every person who shall grind or manufacture any tobacco-stalk flour, snuff-work, or snuff, shall be deemed a *manufacturer of snuff.* And every person who shall sell any tobacco, tobacco-stalks, or returns of tobacco, or stalks flattened or cut into *Spanish*, shall be deemed a *dealer in tobacco.* And every person who shall sell any tobacco-stalk flour, snuff-work, or snuff, shall be deemed a *dealer in snuff*, within the meaning of this act. — Who shall be deemed manufacturers, and who dealers.

By stat. 1 & 2 *G.* 4. *c.* 109. § 9. Every manufacturer of segars shall be deemed a manufacturer of tobacco. — 1&2G.4. c.109. Segars.

By stat. 29 *G.* 3. *c.* 68. § 59. Every manufacturer and dealer shall make entry in writing of his house or place intended to be made use of for manufacturing, keeping, or selling tobacco, tobacco-stalks, *Spanish*, tobacco-stalks for tobacco-stalk flour, snuff-work, tobacco-stalk flour, or snuff, three days before he shall begin; on pain of forfeiting 200*l.*, and also the tobacco, &c. &c. there found, together with the casks and packages, which may be seized by the officers of the customs or excise. — 29 G.3. c.68. Entry to be made.

§ 60. Where entry shall be made of any house or place for manufacturing, keeping, or selling tobacco, &c. &c. no other entry shall be made by any other person (except partners) of any place under the same roof, or within the same house or tenement; on the like penalty.

29 G.3. c.68.

Who may make, &c. or sell tobacco.

§ 61. But the person making the same, within the limits of the head office, must occupy a tenement of 10*l.* a year, and pay to the parish-rates; elsewhere, he must pay to the church and poor.

Entry of mills, presses, &c.

§ 69. Every such manufacturer shall, three days before he begins to manufacture, make entry in writing at the excise office of all mills, presses, engines, rollers, stoves, mullers, or spinning-wheels, intended to be used by him about the manufacturing of tobacco, &c. &c. &c.; on pain of forfeiting 50*l.* for every such utensil not entered. See also 58 *G.* 3. *c.* 65. § 7.

1 & 2 G.4. c.109. Manufacturers of tobacco, being also retailers, to make entry of places to be used by them.

By stat. 1 & 2 *G.*4. *c.*109. § 1. After the 10th of *October*, 1821, every manufacturer of tobacco or snuff *who shall retail tobacco or snuff*, shall, in the entry of premises for manufacturing and keeping and retailing tobacco or snuff, specially describe and distinguish the parts and places which he or she shall make use of, or intend to make use of, for laying or keeping his or her stock of manufactured tobacco or snuff *for retail only*, and the shop and shops, place and places from which he or she shall retail or intend to retail the same; and every such retailer, and all such places and shops so entered by any manufacturer of tobacco or snuff, for laying or keeping tobacco or snuff for retail, or retailing tobacco or snuff, and the retail stocks of tobacco or snuff therein, shall be surveyed by the proper officer, and be subject to all the rules and regulations, penalties, and forfeitures, to which *retailers only*, and the entered premises of retailers only of tobacco or snuff, and the stocks of such retailers, are or shall be by law liable; and all tobacco and snuff which shall be retailed or sold by any such retailer from his or her retail stock, shall be first removed to and received by him or her into the places specially entered and distinguished by him or her for laying or keeping tobacco or snuff for retail, and into his or her retail stock, with and under a legal permit; and if any raw or unmanufactured tobacco, tobacco-stalks, tobacco-stalk flour, returns, or snuff-work, not being in legal transit, and enclosed and secured in the original package and packages thereof, and accompanied by a legal permit, shall be found

Such places to be surveyed by the proper officer.

Tobacco, &c. to be removed by permit.

Tobacco, &c. found removing without permit, &c. to be for-



shall cause to be painted or written in large legible characters over the outer door, or in the front, or on some conspicuous part of each such house or place, the words, *Manufacturer of and Dealer in Tobacco and Snuff*, or *Tobacco or Snuff*, or *Manufacturer of* or *Dealer in Tobacco and Snuff*, or *Tobacco or Snuff*, (as the case may be,) on the penalty of 50*l*.

29 G.3. c.68. Certain words to be put up.

§ 68. If any person, who has not made such entry as aforesaid, shall paint or write up the said words in such manner and place, he shall forfeit 100*l*.

And by stat. 30 *G.* 3. *c.* 40. § 8. No person shall set up or begin any manufactory of tobacco, &c. &c. within five miles of the sea-coast (except in the ports and places aforesaid where tobacco may be imported, or places within three miles thereof; and also except in cities, or the suburbs thereof, and market towns); and no entry thereof shall be of any avail.

30 G.3. c.40. Where only manufactories may be set up.

But by stat. 29 *G.* 3. *c.* 68. § 76. Tobacco and snuff may be manufactured by any unlicensed *Spanish* cutter, or snuff-miller at any entered mill, on account of any other licensed manufacturer, provided the same be legally permitted from such other manufacturer, and for the sole purpose of manufacturing or grinding.

29 G.3. c.68. May be manufactured at entered mills by unlicensed persons.

By stat. 1 & 2 *G.* 4. *c.* 109. § 3. It shall be lawful for any manufacturer of tobacco and snuff to strip from the stalks any tobacco leaf which has not been wetted, without giving to the officer of excise previous notice, and without such stripping being deemed to be a commencement of the manufacture of tobacco or snuff: Provided that every such manufacturer shall, in the notice for commencing the manufacture, mention whether the tobacco-leaf specified in such notice and intended to be part of the operation, or how much thereof, is leaf stripped from the stalks thereof by such manufacturer, and how much thereof is leaf unstripped, and if such leaf be leaf stripped from the stalks, such stalks shall not be deemed part of the tobacco-leaf to be weighed for the operation, but such manufacturer shall have credit in his unmanufactured stock for all such tobacco-stalks.

1 & 2 G.4. c.109. Manufacturer of tobacco and snuff to be at liberty to strip leaf which has not been wetted, without notice.

The notice shall specify whether the tobacco-leaf is leaf stripped, and how much leaf is unstripped.

§ 4. The word "*Operation*" is used in this act, and shall be construed to mean and express only the quantity of tobacco and other materials, weighed by the officer of excise, and declared by the manufacturer at one time for the manufacture of the tobacco or snuff specified in such declaration.

Operation of tobacco, what means.

By stat. 29 *G.* 3. *c.* 68. § 77. 95.—30 *G.* 3. *c.* 40. § 30. Every manufacturer shall give notice in writing to the officers, if in *London* 6, in cities and market towns 12, and elsewhere 24 hours, before he shall begin to strip, spin, or press any tobacco for cutting; or make any tobacco into carrots, or flatten any tobacco-stalks for *Spanish*; and shall express therein the weight of each article, and the time he intends to begin; and the officer shall attend accordingly, and he shall begin within one hour of the time so mentioned, and shall proceed without delay; and shall afterwards deliver a declaration in writing to such officer, of the quantity intended to be used for each sort of tobacco, on the penalty of 20*l*. and such notice being void.

29 G.3. c.68. 30 G.3. c.40. Notice to be given of beginning to work.

By stat. 29 *G.* 3. *c.* 68. § 78, 79. No manufacturer shall be liable to the said penalty, if such tobacco shall afterwards appear to be unfit to be so pressed, spun, or made into carrots according to such declaration; *and notice thereof* in writing, specifying the

Tobacco not fit for the purpose intended.

29 G.3. c.68.

weight of such tobacco, shall be given in 48 hours after delivery of the declaration; and in case the manufacturer within that time in like manner deliver to such officer a like declaration, specifying into what sort of tobacco or snuff it is to be manufactured, and shall, in like manner, proceed to press for cutting, to spin, to make into carrots, and the like, if it be to be made into snuff.

Weights, &c. of each sort to be declared after manufacturing.

§ 80, 81, 82. Such manufacturer, as soon as the manufacturing is finished, shall deliver to the officer a declaration of the weight of the different sorts of tobacco so manufactured, and the number of the rolls or carrots made, and the weight thereof, and of the tobacco-stalks and returns arising from the operation; and shall keep each sort separate for 24 hours, or until an account be taken; on the penalty of 50*l*.

§ 102. Every manufacturer shall keep unmanufactured tobacco, tobacco in operation, and manufactured tobacco, separate from each other, on pain of forfeiting 50*l*.

1 & 2 G.4. c.109. Only three operations of cut tobacco to be allowed, and such operations to be finished within a limited time, according to the size of the operation.

By stat. 1 & 2 *G.*4. *c.*109. § 6. No manufacturer of tobacco shall have depending, at the same time, more than three operations for the manufacture of cut tobacco, under which denomination all such tobacco shall be kept in stock, permitted, and sent out, whether the same be generally called or known by the name of short cut or shag tobacco; and every such operation, where the weight of tobacco or tobacco and returns declared for such operation shall not exceed 500 pounds weight avoirdupois, shall be finished, and declared by such manufacturer to be finished, before the expiration of seven working days from the date of such declaration; and where the weight so declared shall exceed 500 pounds, such operation shall be finished and declared to be finished, before the expiration of ten working days from the date of such declaration; and every such manufacturer who shall have depending, at one and the same time, more than three operations for the manufacture of cut tobacco, or who shall refuse or neglect to finish, and declare to be finished, any operation for the manufacture of cut tobacco, within the period of time hereinbefore mentioned,



time specified in such notice, attend for that purpose, and such manufacturer shall thereupon produce to such officer all the manufactured tobacco (except such part thereof as shall have been taken therefrom and sent out pending such operation, under the laws in that case made and provided), and the tobacco-stalks and returns of such operation; and such officer shall thereupon weigh all such manufactured cut tobacco, tobacco-stalks (if any), and returns of such operation, and so soon as the same are weighed to the satisfaction of such officer, such manufacturer shall cause all such manufactured cut tobacco to be removed, and put or placed with his or her stock of manufactured tobacco, and shall also remove the tobacco-stalks (if any), and the returns of such operation, and put or place the same with his or her stock of unmanufactured tobacco, tobacco-stalks, and returns, not in operation; and if any such manufacturer shall neglect or refuse to remove from time to time all such tobacco-stalks when stripped from the leaf, and keep the same separate, and ticketed or labelled, or shall add any thing to or mix any thing therewith, or conceal or make away with any part thereof, until the proper officer shall, on such operation being finished, have weighed and taken an account of the manufactured cut tobacco, tobacco-stalks, and returns of such operation, or shall not, when such operation is finished, and within the period before prescribed, according to the weight of such operation, give such notice and declaration as aforesaid, and produce all the manufactured tobacco, except as aforesaid, tobacco-stalks (if any), and returns of such operation to, and give such officer all the aid and assistance such officer shall require in weighing and taking a true account thereof; or if any such manufacturer shall use any art, device, means, or contrivance, by which such officer shall be hindered, molested, or prevented in weighing the same, or shall be deceived, or such account shall be defeated; or if such manufacturer shall not afterwards remove or cause to be removed and kept as aforesaid, all such manufactured cut tobacco, tobacco-stalks (if any), and returns as aforesaid, all such tobacco, tobacco-stalks, and returns shall be forfeited, and may be seized by any officer of excise; and if, on weighing the same, the officer shall find, when such operation is finished or declared to be finished, any greater weight of manufactured cut tobacco, together with the stalks and returns of such operation, than after the rate of 105 pounds for every 100 pounds of the weight of the tobacco or tobacco and returns weighed and declared for such operation, so much of such manufactured tobacco as shall be equal to the weight of such greater increase shall be forfeited, and may be seized by any officer of excise; and every such manufacturer shall for every such offence forfeit the sum of 50*l.*: Provided that no such manufacturer shall have or be allowed any credit in his or her manufactured stock for more than the weight of the tobacco or tobacco and returns weighed and declared for such operation, actually manufactured into cut tobacco, and produced to and weighed by the officer, and removed by such manufacturer into his or her manufactured stock of cut tobacco, and the further credit of 5*l.* for every 65 pounds of the tobacco or tobacco and returns so manufactured; and after the same rate for any less quantity, so as such credit shall not exceed the rate of 105 pounds for every *100 pounds of the tobacco* or tobacco and returns *weighed and declared for such operation.*

1 & 2 G.4. c. 109.

Penalty for not removing the stalks when stripped from the leaf, and keeping them separate, &c. till account is taken; neglecting to give notice; deceiving officer, &c., 50*l.* and forfeiture of tobacco, &c.

Credit in stock allowed for cut tobacco.

. & 2 G.4. .109.

Manufacturers of tobacco to have only three operations of roll or carrot, and only two operations of lug tobacco, depending at one time.

§ 8. No manufacturer of tobacco shall have depending, at the same time, more than three operations for the manufacture of roll or carrot tobacco, or more than two operations for the manufacture of lug tobacco; and every such manufacturer shall cause all the tobacco-stalks stripped from the leaf, or tobacco and returns weighed and declared for such operation, to be from time to time removed and kept and deposited in bin, cask, chest, bag, or parcel, separate from all other tobacco-stalks, and ticketed or labelled as tobacco-stalks belonging to such operation; and shall not add to or mix any thing therewith, or conceal or make away with any part thereof, until all the rolls, carrots, or boxes made up or to be made up from the tobacco or tobacco and returns of the operation to which such tobacco-stalks belong and are part, together with the whole of the returns thereof, have been weighed and taken account of by the proper officer after such operation is declared to be finished; and every such manufacturer shall, before the expiration of 42 days from the date of his or her declaration of any operation for the manufacture of roll, carrot, or lug tobacco, make up the whole number of the rolls, carrots, or boxes to be made up of or from such operation, and shall, upon all such rolls, carrots, or boxes being made up, and within the time aforesaid, deliver to the proper officer a notice and declaration in writing that all such rolls, carrots, or boxes are made up, and that such operation is finished, specifying the number, date, and weight of such operation, and the weight of the tobacco-stalks and returns, and the number and weight of such rolls, carrots, or boxes; and such officer shall within 24 hours, or if in a market town, within six hours, after the receipt of such notice and declaration, attend, and such manufacturer shall produce all such rolls, carrots, or boxes, (except such part of such roll tobacco as shall have been taken therefrom, and sent out pending such operation, under the laws in that case made and provided,) to such officer to be weighed and taken account of, together with all the tobacco-stalks and returns of such operation, and such officer shall thereupon weigh

Notice to be given when operation is finished, for the officer to take in account.

chest, bag, or parcel, separate from all other tobacco-stalks, and ticketed or labelled as aforesaid, or shall add to or mix any thing therewith, or make away with or conceal any part thereof, before all the rolls, carrots, or boxes of tobacco made up or to be made up of or from the operation to which such tobacco-stalks belong and are part, together with the whole of the tobacco-stalks and return thereof, have been weighed and taken account of by the proper officer of excise, at the time of such operation being finished, and declared to be finished; or if any such manufacturer shall not, before the expiration of forty-two days from the date of his or her declaration for any operation for the manufacture of roll, carrot, or lug tobacco, make up the whole of the rolls, carrots, or boxes, and within such time as aforesaid deliver to the officer such notice and declaration thereof, and that such operation is finished, and produce all the rolls, carrots, or boxes (except as aforesaid), tobacco-stalks and returns of such operation, to the proper officer of excise, to be weighed and taken account of, and give to such officer all the aid and assistance that he may require for that purpose; or shall use any means, art, or contrivance to deceive such officer, or hinder, molest, or prevent him from taking such account; or if any such manufacturer shall not cause all the tobacco-stalks and returns of such operation, after weighed and taken account of, to be removed to, and kept with and as part of the unmanufactured stock of such manufacturer not in operation, every such manufacturer shall for every such offence forfeit the sum of 100*l.*: Provided always, that no manufacturer of carrot or lug tobacco shall have or be allowed any credit in his or her manufactured stock, for more than for the weight of carrot and lug tobacco respectively, which he or she shall actually bring off manufactured, and shall produce to the officer, and which shall be weighed by him, not exceeding the rate of 115 pounds for every 100 pounds of the tobacco or tobacco and returns weighed and declared for operation, after deducting from such weight the weight of the tobacco stalks and returns (if any) of such operation; nor shall any manufacturer of roll tobacco have or be allowed any credit in his or her manufactured stock for more than the weight of so much of the tobacco-leaf weighed and declared for operation, as shall be spun into roll, and so produced and weighed, and the further credit of 15*l.* for every 65 pounds of such weight of leaf so spun, produced, and weighed, and after the same rate for any less quantity, so as such credit shall not exceed the rate of 115 pounds for every 100 pounds of the tobacco, or tobacco and returns, weighed and declared for operation for roll tobacco.

1 & 2 G. 4. c. 109.

ing the stripped stalks; keeping them separate, &c.; for neglecting to give notice; for deceiving officer, &c. 100*l.*

Credit in stock for carrot and lug tobacco.

§ 9. Every manufacturer of segars shall be deemed a manufacturer of tobacco; and no manufacturer of tobacco shall have depending, at the same time, more than three operations, or any operation of less weight than 30 pounds of tobacco, or tobacco and returns, for the manufacture of segars; and that every manufacturer of segars shall, in the entry made by him or her of premises for manufacturing tobacco, specify and distinguish some room or place thereof, to be used by him or her for making segars, and which during the manufacture of segars shall not be used by such manufacturer for any other purpose; and every such manufacturer shall cause all the tobacco-stalks stripped from the leaf of any tobacco, *declared for an operation* for the manufacture of se-

Manufacturer of segar tobacco to have only three operations depending at one time.

1 & 2 G.4. c.109.

gars, to be from time to time removed, as the same are stripped from the leaf, and kept and deposited in such room, in bin, cask, chest, bag, or parcel, separate from all other tobacco-stalks, and ticketed or labelled as being the tobacco-stalks belonging to such operation, and shall not add to or mix any thing therewith, or conceal or make away with any part thereof, until all the segars made up or to be made up of or from such operation, together with the tobacco-stalks and returns, have been weighed and taken an account of by the proper officer; and every such operation shall be finished within 28 days from the date of the declaration for such operation; and when and so soon as any such operation shall be finished, the manufacturer shall give 24 hours' notice, and a declaration thereof in writing, to the proper officer, specifying the date and weight of such operation, and the number of the segars manufactured; and such officer shall attend at the time specified in such notice and declaration, and such manufacturer shall produce all such segars, together with the tobacco-stalks and returns of such operation, to such officer, to be weighed and taken an account of, and such officer shall thereupon weigh and take account of the whole of such manufactured segars, and also of the tobacco-stalks (if any) and the returns of such tobacco; and so soon as the same are weighed by and to the satisfaction of such officer, such manufacturer shall remove all such segars, and place the same with his or her stock of manufactured tobacco, and shall also remove the tobacco stalks (if any) and returns of such tobacco, and place the same with his or her stock of unmanufactured tobacco, or tobacco-stalks and returns not in operation, there to be kept as aforesaid; and if any person manufacturing segars shall begin to manufacture segars without having first made such special entry, and being duly licensed as a manufacturer of tobacco, or shall, whilst any such room or place so entered is used for manufacturing segars, use or suffer such room or place to be used for any other purpose, or shall neglect or refuse to remove and keep all such tobacco-stalks, when stripped from the leaf, separate and

Notice to be given when operation is finished, for the officer to take an account.

Penalty for not making special entry before manufacturing segars; for not removing the stripped stalks and keeping



weighing, the officer shall find any increase in the weight thereof, above the rate of 105 pounds for every 100 pounds of the weight of the tobacco or tobacco and returns weighed and declared for operation, such increase shall be forfeited, and a quantity of such segars equal thereunto may be seized by any officer of excise; and every such manufacturer shall, for every such offence, forfeit the sum of 100*l.*: Provided always, that no manufacturer of segars shall have or be allowed any credit in his or her manufactured stock, for more than the weight of tobacco or tobacco and returns of the operation actually made into segars, and produced to and weighed by the officer, with 5*l.* for every 100 pounds of the tobacco or tobacco and returns weighed and declared for such operation, and so in proportion for any less quantity. 1 & 2 G.4. c. 109. Credit in stock for segars.

§ 5. If before the expiration of any period respectively prescribed by this act, for finishing and declaring to be finished any operation for the manufacture of tobacco, any unforeseen or inevitable cause or accident shall occur, by which any such manufacturer shall unavoidably be prevented from finishing and declaring the same to be finished within such period, and such manufacturer shall forthwith give notice in writing of such cause or accident to his or her surveying officer, specifying therein the nature thereof, and shall give proof to the supervisor of excise in whose district the entered premises of such manufacturer are situate, of such cause or accident, and of the delay thereby occasioned, and shall finish such operation and declare the same to be finished with as much diligence and despatch as the nature of such cause or accident will allow, no such manufacturer shall incur any forfeiture or penalty by reason of the delay in the performance within the respective period prescribed for that purpose, unavoidably occasioned by such cause or accident. If operations not completed within the time limited owing to unavoidable accident, of which notice shall be given, no forfeiture or penalty to be incurred.

§ 11. If upon any notice given by any manufacturer of tobacco or snuff under this act, the officer of excise shall attend as required, and at the time specified in such notice, and such manufacturer shall not within one hour after such officer shall be present, begin to do the act specified in such notice, or for which such notice was given; or if any such manufacturer shall previously declare in writing, delivered to such officer, any such notice void, every such notice shall be void, and it shall be lawful for any manufacturer of tobacco or snuff to proceed in any act, requiring the presence only of the officer when done, and which shall be specified in any such notice, if such officer shall not attend: Provided that no such manufacturer shall proceed so to do, unless such officer shall not attend for the space of one hour after the expiration of the time specified in such notice for that purpose; and no notice shall be given or declaration made by any manufacturer (except in case of accident), that shall require the attendance of any officer of excise at or upon the entered premises of any such manufacturer, on a *Sunday*, or at any other time, or between any other hours than between six in the morning and eight in the evening; and if any notice shall be given, or declaration be made (except as aforesaid), the same shall be void. Notice to be void if manufacturer shall not proceed within one hour after the officer shall attend. Manufacturer may proceed if officer do not attend. No notice to be given but between six in the morning and eight in the evening.

§ 12. No manufacturer of tobacco shall make, manufacture, or have in his or her possession for exportation, or shall export on drawback, or ship, *or give notice for* that purpose, any cut, roll, No manufacturer shall make any cut, roll, or

1 & 2 G. 4. c. 109.

or carrot tobacco, unless wholly made from tobacco-leaf having the tobacco-stalks stripped and separated therefrom, or from such leaf and returns of tobacco-leaf so stripped, and without the stalks thereof; and if any manufacturer of tobacco shall make, manufacture, or have in his or her possession for exportation, or shall give notice to ship or ship for exportation on drawback, any cut, roll, or carrot tobacco, which shall have been made without the tobacco-stalks being first wholly stripped and separated, so that such cut, roll, and carrot tobacco shall have been wholly made from the leaf of tobacco from which the whole of the stalks have been stripped, or from such leaf and returns of tobacco-leaf so stripped, the same shall be forfeited, and may be seized by any officer of excise; and such manufacturer, who shall so make, manufacture, or have the same in his or her possession for exportation on drawback, shall for every such offence forfeit the sum of 200*l.*

carrot tobacco for exportation on drawback, unless made wholly from tobacco-leaf having the stalks stripped therefrom, on penalty of 200*l.* and forfeiture of tobacco.

29 G. 3. c. 68. Tobacco for exportation to have no stalks in.

By stat. 29 *G.* 3. *c.* 68. § 83. If any manufacturer shall make, or have in his possession, any roll or carrot tobacco for exportation, with any tobacco-stalks therein, the same shall be forfeited, and may be seized, and he shall also forfeit 50*l.*

No person to cut leaves, &c. in imitation of tobacco.

§ 84. Every person who shall cut any walnut-tree leaves, hop-leaves, sycamore-leaves, or other leaves, herbs, or plants, in imitation of tobacco (not being tobacco-leaves or plants); or shall colour, stain, dye, or cure the same so as to resemble tobacco; or shall mix any such leaves, herbs, or plants with tobacco; or shall sell or expose to sale or have in his possession any such leaves, herbs, or plants so cut, coloured, stained, dyed or cured, or mixed, shall forfeit the same, with the casks and package, which may be seized, and also 200*l.* The same penalty attaches to the causing and procuring.

30 G. 3. c. 40. Manufacturers may keep and use dye.

§ 85.—30 *G.* 3. *c.* 40. § 23. Manufacturers may keep and use dye for staining or dyeing tobacco, or tobacco-stalks. See stats. 1 *G.* 1. *st.* 2. *c.* 46. § 1. 7. 5 *G.* 1. *c.* 11. § 22. *post.*

By stat. 29 *G.* 3. *c.* 68. § 86. Every manufacturer of snuff shall

and what sort of snuff it is intended for: which ticket shall be signed both by such manufacturer or his servant and the officer; and when the same is intended to be taken out to be ground, like notice shall be given, and the same shall be weighed out in the presence of the officer; and no such manufacturer shall mix snuff-work or tobacco-stalks for flour of one making with another; on pain of forfeiting, for every offence aforesaid, 50*l*. 29 G.3. c.68.

§ 88.— 30 *G.* 3. *c.* 40. § 9, 10. Provided always, that whilst such snuff-work shall be in cask or bin, and shall afterwards appear to be unfit for the purposes specified in such declaration, or be intended to be manufactured contrary thereto, notice thereof in writing shall be given to the officer within 48 hours after the delivery of such declaration, and a fresh declaration shall be given, specifying the sort it is intended for, and such manufacturer shall proceed therein in manner as aforesaid. 30 G.3. c.40. Snuff-work, &c. not fit for the purpose intended.

By stat. 30 *G.* 3. *c.* 40. § 19, 20, 21. *Scotch* snuff and tobacco-stalk flour may be manufactured into brown *Scotch* snuff, and tobacco-stalk flour into rappee snuff, subject to the regulations aforesaid. And on taking stock, certain credits shall be allowed (as set forth in the act); and if on such taking stock any excess be found, the same shall be forfeited, as brought without an authentic permit, and may be seized. 30 G.3. c.40. Snuff of one sort may be made into another sort.

§ 11, 12. And to snuff-work in operation, tobacco, tobacco-stalks or flour, or returns of tobacco, may be added once while in cask or bin, or once immediately before the grinding, or once at or during each operation, on giving to the officer, previous to such increase being made, a like notice, specifying the cask or bin, and the number thereof, and the time when first laid down, and the time when any increase was made, and the weights of the tobacco, &c. intended to be added. To snuff-work in operation, tobacco, &c. may be added.

§ 13. The whole of any parcel of snuff-work in cure may be mixed with the whole of any other parcel in cure, although laid down at different times, if the same be mixed in the presence of an officer, to whom notice is to be given as aforesaid. Snuff-work in cure may be mixed.

§ 14. If any manufacturer has occasion to supply his customers with manufactured tobacco or snuff from any parcel in operation before the whole is finished, he may, in the presence of an officer, take for the purpose aforesaid any manufactured tobacco or snuff not less than 200 lbs. from any parcel then in operation. But if taken without conforming to the regulations specified in the act, he shall forfeit 50*l*. 200 lbs. or above may be taken from tobacco or snuff in operation.

By stat. 29 *G.* 3. *c.* 68. § 89. Every manufacturer of snuff shall diligently manufacture such snuff-work and tobacco-stalks for flour when taken out of such cask into snuff, according to the notice given; and when the same is finished he shall deliver to the officer a declaration in writing of the weight of each sort so made, and shall keep the same separate for 24 hours, or until the officer shall have taken an account thereof, on the penalty of 50*l*. 29 G.3. c.68. Snuff-work when finished to be kept separate till surveyed.

§ 90. But the same shall not extend to *Scotch* snuff returned directly from the mill; provided at the time the same is taken from the room where deposited, a declaration in writing be delivered to the officer, specifying the weight thereof, and the time when the same was laid down in snuff-work. Except Scotch snuff returned from the mill.

§ 91, 92. Provided *always, that* every manufacturer may pro*vide a store-room for keeping* dried *Scotch* snuff, with good and Store-rooms for dried Scotch snuff.

9 G. 2. c. 28. sufficient fastenings, to be approved of by the surveyors and supervisors of the district; but the same shall have but one door or entrance, which shall be locked up, sealed, and secured by the officer when any *Scotch* snuff shall be therein; wherein may be deposited *Scotch* snuff returned directly from the mill for 6 months without being taken as part of his stock. And when the same is intended to be taken out of such room, notice shall be given to the survey-officer, in six hours if within the limits of the head office of excise, and 12 hours if elsewhere in any city or its suburbs, and 24 hours if elsewhere, who shall attend and open such room, and such snuff shall be taken out in his presence, and shall be kept separate one making from another; on the penalty of 50*l*. And if any such manufacturer shall open such store-room, except in the presence of an officer, he shall forfeit 200*l*.

1 G. 1. st. 2. c. 46. Adulterating tobacco or snuff. By stat. 1 *G.* 1. *st.* 2. *c.* 46. § 1. Every person who shall cut or cause to be cut any walnut, hop, sycamore, or any other leaves, herbs, plants, or materials (not being tobacco-leaves or plants); or shall colour or cure, or cause any such to make the same resemble tobacco for sale; or shall sell or cause to be sold, or agree or offer to sell knowingly the same, mixed or unmixed with tobacco, as tobacco, shall forfeit 5*s*. a-pound, half to the king (charges of the prosecution first deducted), and half with full costs to him who shall sue.

1 G. 1. st. 2. c. 46. 5 G. 1. c. 11. § 7.—*5 G.* 1. *c.* 11. § 22. Every person who shall make, mix, or colour, or cause, &c. any snuff with ochre, umber, or other colouring, except water tinged with *Venetian* red only; or shall mix with snuff any fustic or yellow ebony, touchwood, or other wood, or any dirt, sand, or small tobacco sifted from tobacco, or knowingly sell or expose to sale any such, shall forfeit the same, and 3*l*. for every pound weight, half to the king, and half to him that shall sue.

1 G. 1. st. 2. c. 46. By stat. 1 *G.* 1. *st.* 2. *c.* 46. § 3. All such leaves, herbs, plants, and materials, so sold, contracted for, or knowingly offered for

[redacted]

(other than tobacco); or any earth, clay, or tobacco-sand, with any snuff-work or snuff; or shall make or colour, or cause, &c. the same with any sort of colouring (water tinged with colour only excepted); he shall forfeit 200*l.* And if any manufacturer or dealer in snuff shall sell, offer, or expose to sale, or have in his entered premises, any fustic, yellow ebony, touchwood, logwood, red or *Guinea* wood, Braziletto or *Jamaica* wood, *Nicaragua* wood, or *Saunders* wood; or any walnut-tree, hop, or sycamore leaves; or shall have in his possession any of the aforesaid articles; or any other wood, leaves, herbs, plants, earth, clay, or tobacco-sand, mixed with any snuff-work or snuff; or such snuff-work or snuff coloured (except as aforesaid); he shall forfeit 50*l.*, and the same shall be forfeited and may be seized. 29 G.3. c.68. Fustic, &c. with snuff-work, or having the same in their possession.

By stat. 1 & 2 *G.* 4. *c.* 109. § 14. No manufacturer of, dealer in, or retailer of tobacco or snuff, shall mix with, or cause, permit, or suffer to be mixed with or amongst any tobacco, manufactured or unmanufactured, tobacco-stalks, tobacco-stalk flour, returns of tobacco, snuff-work or snuff, any substance, material, or thing whatsoever, not being tobacco or snuff, and other than water only, or water tinged with colour or flavoured only; and if any tobacco, manufactured or unmanufactured, tobacco-stalks, tobacco-stalk flour, returns of tobacco, snuff-work or snuff, shall be found in the possession of any such manufacturer, dealer, or retailer, or in transit from any such manufacturer, dealer, or retailer, or other person, to any other person, mixed with any substance, material, or thing, not being tobacco or snuff, and other than water only, or water tinged with colour or flavoured only, or amongst which any substance, material, or thing, not being tobacco or snuff, and other than water only, or water tinged with colour or flavoured only, has been put, all such tobacco, tobacco-stalks, tobacco-stalk flour, returns, snuff-work and snuff, shall be forfeited, and may be seized by any officer of excise; and if any manufactured tobacco or tobacco-stalk flour, in the possession of any manufacturer of, dealer in, or retailer of tobacco or snuff, shall be found, upon any analysis thereof, to contain a greater weight of any substance, material, or thing, not being tobacco, and other than water only, or water tinged with colour or flavoured only, than two *per centum* of the weight of the manufactured tobacco or tobacco-stalk flour under analysis; or if any snuff in the possession of any manufacturer of or dealer in or retailer of tobacco or snuff, shall be found, upon any analysis thereof, to contain a greater weight of any substance, material, or thing, not being snuff, and other than water only, or water tinged with colour or flavoured only, than four *per cent.* of the weight of the snuff under analysis, such material, article, or thing, not being in such case tobacco or snuff, and being other than water only, or water tinged with colour or flavoured only, shall be deemed to have been unlawfully added and mixed with such manufactured tobacco, tobacco-stalk flour, or snuff, by the person in whose possession such manufactured tobacco, tobacco-stalk flour, or snuff shall be found; and all such manufactured tobacco, tobacco-stalk flour, and snuff shall be forfeited, and may be seized by any officer of excise; and every manufacturer of, dealer in, and retailer of tobacco or snuff, in whose possession any such adulterated tobacco, tobacco-stalks, tobacco-stalk flour, returns of tobacco, snuff-work or snuff, shall be found, 1 & 2 G.4. c.109. Forfeiture of adulterated tobacco or snuff. Allowance of weight of any substance in tobacco other than water.

& 2 G.4. c.109.

or who shall commit, or cause to be committed, any such offence, shall forfeit for each and every such offence the sum of 100*l.* over and above all other penalties and forfeitures.

30 G.3. c.40. Snuff completely finished may be liquored.

By stat. 30 *G.* 3. *c.* 40. § 15, 16, 17. Any manufacturer of *British* rappee, *Scotch* or brown *Scotch* snuff completely finished, and of which an account has been taken by the officer, may liquor or damp the same before mixing with snuff of a different making, so as the weight exceed not the legal credit; and if such manufacturer shall intend to liquor or damp snuff for which the legal credit has not been received, he shall give notice thereof to the officer, specifying the kind, weight, and quantity (and other particulars in the act stated): But no snuff shall be liquored in less parcels than 200 lbs. nor one making in more than four different parcels.

§ 18. Snuff for which such allowance shall have been made, shall be kept separate from all other snuff, and shall be shown to the officer on demand; on the penalty of 20*l.*

29 G 3. c.68. An account to be kept of mixed tobacco or snuff sold or sent out.

By stat. 29 *G.* 3. *c.* 68. § 94. Every manufacturer and dealer who shall mix *Spanish* with short-cut tobacco, or any tobacco-stalk flour with *British* or foreign snuff, or any *British* rappee, *Scotch*, or brown *Scotch* snuff, the one with any other of them, or with any kind of foreign snuff, shall every day enter into a book or paper the quantity sold, sent out, or consumed of 2 lbs. or upwards, and the gross weight thereof, and the gross weight of the tobacco-stalk flour, and the time when mixed; on pain of forfeiting 50*l.*

Manufacturing tobacco or snuff in unentered places.

§ 96. When any officer shall discover that the manufacturing of tobacco or snuff is carried on in any unentered place, and at the same time shall discover therein any person knowingly assisting, or any ways concerned in carrying on the same, every such person shall forfeit 30*l.* over and above all penalties and forfeitures that the proprietor thereof shall be liable to; and such officer or his assistant, may stop and arrest such person, and convey him before a justice, who, on his confession or the oath of one witness, may con-

he shall forfeit 200*l.*, together with such scales and weights, which may be seized. 29 G.3. c.68.

§ 100. And every such manufacturer and dealer shall, with a sufficient number of his servants, assist such officer in taking such account of stock, on pain of forfeiting 50*l.* And to assist the officers.

§ 101. But no officer shall weigh any tobacco-stalks, or snuff-work, whilst actually in the operation of manufacture; except snuff-work intended to be sent out or received by permit. Not to be weighed whilst in operation.

§ 102. And unmanufactured tobacco, tobacco in the state of operation, and manufactured tobacco, shall be kept separate from each other, on the penalty of 50*l.* To be kept separate.

See stat. 1 & 2 *G.* 4. *c.* 109. § 7, 8, & 9. *ante.*

By stat. 29 *G.* 3. *c.* 68. § 103. The officers shall be permitted to take samples of tobacco or snuff, &c. in the possession of any manufacturer or dealer, paying for the same (if demanded) the value or usual price, on the penalty of 100*l.* upon refusal. Officers may take samples.

§ 104, 105. Every manufacturer and dealer shall, in a book or paper, to be furnished by the officers, on demand made, keep an account of all tobacco, &c. and snuffs which he shall have sold, sent out, or consumed the preceding day, in quantities of 4 lbs. or upwards of tobacco, &c. and 2 lbs. or upwards of snuffs; and also another book or paper in like manner, if under 4 lbs. of tobacco, &c. or 2 lbs. of snuffs: but no such person shall have more than one such book or paper of each sort at the same time, which is to be returned to the officer, if in *London*, or any city or market-town, every six weeks, elsewhere every six months, or when the same is filled up, or demanded, and shall be verified on oath. And such books and papers shall lie open for the inspection of the officer, and shall be made up at his request, on the penalty of 100*l.* for every such offence. An account to be kept of the quantity daily sold.

By stat. 53 *G.* 3. *c.* 88. § 1. No verification on oath, as mentioned in stat. 29 *G.* 3. *c.* 68. § 105. shall be required; and when any of the books or papers therein mentioned shall be returned to the officer, the truth of the entries therein shall be verified upon the declaration in writing of, and subscribed by the manufacturer of or dealer in tobacco or snuff, in the presence of such officer; and if any manufacturer of, or dealer in tobacco or snuff, shall neglect or refuse to verify upon his declaration the truth of the entries made in any such book or paper, or to subscribe the declaration, or shall make or subscribe a false declaration, he shall forfeit 100*l.* 53 G.3. c.88. Verification on oath not required, but a declaration to be made instead.

§ 2. Every manufacturer of, and dealer in tobacco and snuff, shall, on demand by the officer of excise under whose survey he shall then be, enter into the said book, or on such paper, the quantities of the said commodities, which he is by the act 29 *G.* 3. *c.* 68. § 94. and 104. required to enter; and shall immediately afterwards, if demanded by such officer, return such book or paper to him; and the truth of the entries shall be verified upon declaration as aforesaid, under the penalty of 100*l.* for every neglect or refusal. Dealers to make entries in books on being required by excise-officer.

By stat. 29 *G.* 3. *c.* 68. § 106. If any officer shall discover any increase in such stock not legally accounted for, the same shall be deemed and taken to be made by a commodity for which no duty has been paid, and privately brought in without permit; and such increase shall be forfeited, and may be seized; and the per- 29 G.3. c.68. Unfair increase in stock to be forfeited.

son in whose stock such increase shall be found, shall also forfeit 20*l.*

1 & 2 G. 4. c. 109. Supervisors and other officers of equal or superior rank, to weigh all tobacco in possession of any manufacturer of tobacco or snuff.

By stat. 1 & 2 *G.* 4. *c.* 109. § 13. It shall be lawful for any supervisor, or other officer of excise of equal or superior rank, but in the presence and with the approbation of the collector or general surveyor of excise, if in a town in which such a collector or general surveyor is resident, and such collector or general surveyor be summoned and required by such manufacturer to attend for that purpose, at any time, to weigh all or any part or parcel of all the tobacco, tobacco-stalks, tobacco-stalk flour, returns, snuff-work, and snuff, of any manufacturer, whether the same or any part or parcel thereof be manufactured or unmanufactured, or is in or under any process of manufacture (except snuff-work between the time of being put into process of cure, and the taking out any part for drying or grinding the same); and if upon any such weighing, such supervisor or other officer shall find in the possession of any manufacturer any greater weight of any unmanufactured tobacco, tobacco-stalk flour, or snuff, or any unmanufactured tobacco, tobacco-stalks or returns (not being part of any depending operation), than the credit to which such manufacturer shall be at that time entitled, such greater weight of manufactured tobacco, tobacco-stalk flour or snuff, or unmanufactured tobacco, tobacco-stalks, or returns respectively, shall be forfeited, and may be seized by any officer of excise, and every such manufacturer shall, for every such offence, forfeit the sum of 100*l.*; and if any such supervisor or other officer shall upon any such weighing find any such tobacco, tobacco-stalks, tobacco-stalk flour, returns, snuff-work or snuff, or any part or parcel thereof, to be of greater weight than shall be accounted for by such manufacturer by the water added thereto for the purpose of the manufacture thereof, every such supervisor or other officer shall make thereupon such full and particular examination, not only of such operation on which such greater weight shall be found, and not accounted for as aforesaid, but of all and

If the weight is beyond the credit, the excess shall be forfeited, and the manufacturer shall forfeit 100*l.*

If in weighing tobacco in process for manufacture greater weight shall be found than accounted for by the manufacturer, he shall forfeit 100*l.*

not give to such supervisor or other officer all such aid and assistance as he may require in or for any such weighing or taking any such account, or shall use any art, device, or contrivance, by which any such supervisor or other officer shall be hindered, obstructed, deceived, or defeated therein; or if any such manufacturer shall, after any supervisor or other officer shall have begun, or expressed or signified to such manufacturer, his servant or workman, his intention to begin to weigh or take an account of any tobacco, tobacco-stalks, tobacco-stalk flour, returns, snuff-work or snuff, or any part or parcel thereof as aforesaid, remove or conceal any part thereof, or make any alteration or change therein, by which the weight may be lessened or increased, or the weighing and taking an account thereof may be rendered imperfect or more difficult, every such manufacturer shall, for every such offence, forfeit the sum of 200*l.* 1 & 2 G.4. c.109.

By stat. 29 *G.* 3. *c.* 68. § 107, 108. But *Scotch* snuff in the custody of a manufacturer or dealer, not having gained more than 5lbs. in the 100lbs. by the moisture of the air, shall be deemed a fair commodity, and such manufacturer shall have credit for the same in stock, and may remove the same by permit; and the manufacturer and dealer shall keep such snuff separate from all other snuff, and show the same to the officer upon demand, on the penalty of 20*l.* 29 G.3. c.68. Scotch snuff not having gained more than 5lbs. in 100lbs.

§ 109. If any manufacturer shall remove any tobacco or snuff out of his entered house or place before the same has been weighed and taken an account of by the officer, or shall hide or conceal the same from the view of such officer, he shall forfeit 50*l.* Tobacco or snuff not to be removed before weighing.

§ 110. And no tobacco (except returns) of 4lbs. and upwards, nor snuff of 2lbs. and upwards, nor any tobacco-stalks, *Spanish*, returns of tobacco, tobacco-stalks for flour, snuff-work, or tobacco-stalk flour exceeding 200lbs., shall be removed by land or water without a permit, on pain of forfeiting the same, with the casks or other packages, and also the horses, cattle, boats, barges, and carriages used in conveying the same, which may be seized by any officers of customs or excise. Not without a permit.

§ 111, 112. The officers of excise, on request, shall grant permits, wherein shall be limited the time for such removal; and distinguishing the weight, kind, according to the denominations in the request-note, and the name of the person to whom, and place to which to be sent; and whether by land or water, and by what mode of conveyance; and if the goods permitted shall not be delivered and received within the time so limited, the same shall be deemed and taken to be removed without permit. Officers to grant permits.

But by stat. 30 *G.*3. *c.* 40. § 29. No permit shall be granted or be valid for the removal of any snuff-work from one part of the kingdom to another, except from the entered premises of a manufacturer of snuff where the same was laid down, to the mill for the purpose of grinding, on pain of forfeiture thereof, together with the horses, cattle, boats, barges, and carriages used in the removal thereof, which may be seized. 30 G.3. c.40. Exceptions.

And by stat. 29 *G.* 3. *c.* 68. § 113, 114. No such permit shall be granted or be valid, unless a request-note be sent from such manufacturer or dealer containing the particulars specified in the act, and such permit correspond with the request-note; and if for removing unmanufactured *tobacco* (*other* than samples), except the *same be in the original package*, and be removed according to the 29 G.3. c.68. Request-notes to be given. Permits for removing unmanufactured tobacco.

29 G.3. c.68. regulations specified in the act (for which see this section in the act itself). And all tobacco, &c. removed contrary thereto shall be forfeited, together with the casks and package, and the horses, cattle, boats, barges, and carriages used in the removal thereof, which may be seized.

30 G.3. c.40. Permit for removing to and from mills. By 30 *G.* 3. *c.* 40. § 25. 28. Permits may be granted for the removal of any unmanufactured tobacco in any quantity not less than 200 lbs. in any package whatsoever from the entered premises of any manufacturer to any mill to be manufactured, and back to such entered premises.

§ 27. And every manufacturer of tobacco or snuff may manufacture their tobacco, tobacco-stalks, snuff-work, and returns of tobacco, at any entered mill, and may remove the same by permit to and from such mill.

29 G.3. c.68. Tobacco may be finished or snuff dried at mills. By 29 *G.* 3. *c.* 68. § 115. Nothing herein shall extend to prevent any manufacturer from stoving or finishing tobacco, or drying snuff-work at any cutting-mill, or snuff-mill, provided the officer be allowed to weigh, and take an account thereof after such stoving, finishing, or drying.

Permits when not used to be returned. § 116. Where any permit shall be granted for the removal of any tobacco, &c. or snuff, and the same shall not be removed agreeably thereto, such permit shall be returned before the expiration of the time limited for such removal; on forfeiture of treble the value of such goods; and where such permit shall not be so returned as aforesaid, and on taking stock a decrease does not appear to answer the contents of such permit, a like quantity to that permitted to be removed shall be forfeited, and may be seized.

Manufacturer not licensed as a dealer. § 117. No manufacturer, unless also licensed as a dealer, shall have a permit for, or shall sell or send out any manufactured tobacco, *Spanish*, or returns of tobacco, in a less quantity than 4 lbs., nor snuff than 2 lbs., on the penalty of 20*l.*

No tobacco, &c. to be taken § 118. No tobacco, &c. or snuff shall be brought into any house or place made use of by a manufacturer or dealer without a per-

letters, the denomination or description of the contents thereof, and adding to such denomination when the same is manufactured, the words *manufactured stock;* and shall hang up, and continue to be hung up, conspicuously upon some wall or door near to the place where any operation is depending and in process of manufacture, a board, ticket, or label, on which shall be painted, written, or printed, in distinct and legible numbers and letters, the number, date, and size of such operation then there depending, and the particular tobacco or snuff for which the same is there in process of manufacture; and every such manufacturer shall, at the request of any officer of excise, point out, produce, and show to him all and every part of his or her tobacco-stalk flour, and manufactured stocks of tobacco and snuff respectively, and of his or her unmanufactured stocks, not being part of any depending operation, and also the tobacco, tobacco-stalks, returns, tobacco-stalk flour, snuff-work, and snuff weighed and declared for any operation, and the whole and each part of every operation for the manufacture of tobacco or snuff then depending in such manufactory; and if any such manufacturer shall refuse or neglect to mark, paint, write, or print on and distinguish every such bin, cask, box, chest, bag, or parcel and operation, or shall falsely or untruly distinguish any such bin, cask, box, chest, bag, or parcel, and operation as aforesaid, and refuse or neglect, on the request of any officer of excise, to point out, produce, and show to him all and every stock and particulars as aforesaid, all the tobacco, tobacco-stalks, tobacco-stalk flour, returns, snuff-work, and snuff contained in any such undistinguished or falsely distinguished or concealed bin, cask, box, chest, bag, and parcel, together with the package thereof, shall be forfeited, and shall and may be seized by any officer of excise; and every such manufacturer so refusing or neglecting to point out, produce, and show to any officer of excise making such request, all and every such stock and particulars as aforesaid, shall for every such offence forfeit the sum of 100*l.*

1 & 2 G. 4. c. 109.

Penalty for neglecting to distinguish the tobacco, and to show the stock to the officer, &c.

By stat. 29 *G.* 3. *c.* 68. § 119. No tobacco, &c. or snuff shall be removed from any place without the limits of the bills of mortality, or excise-office in *London*, to any place within those limits; nor from any place without the limits of the ports herein-before enumerated to any place within, or within two miles of those limits; on forfeiture thereof, with the casks and packages, and also the vessels and boats, and the horses, cattle, and carriages employed in removing the same, which may be seized.

29 G. 3. c. 68. Removing to London, or the parts aforesaid.

§ 121. No *Spanish* manufactured by any *Spanish* cutter from tobacco-stalks, received by him accompanied with a legal permit from any other manufacturer of tobacco for the purpose only of manufacturing the same into *Spanish*, for or on account of such other manufacturer; *nor* any cut tobacco, cut by any cutter from tobacco, &c. (as before); *nor* any tobacco-stalk flour ground by any snuff-miller from tobacco-stalks received, &c. (as before); *nor* any snuff ground by any snuff-miller from any snuff-work received, &c. (as before); *nor* any hogshead, &c. or package containing any such *Spanish*, &c., or the vessel, boat, &c. &c. employed in removing the same, shall be forfeited by reason of the return of any such *Spanish*, &c., by any such *Spanish* cutter or snuff-miller, from his entered mill *not within the limits* of the weekly bills, or

29 G.3. c.68. of the chief office of excise, or from any place not within the limits of the said first-mentioned ports, to the entered premises whence received, situate as aforesaid, or within two miles of the said ports, provided the said *Spanish*, &c. be accompanied with a permit according to this act.

§ 122. Provided also, that any manufacturer may send for sale, by permit, snuff manufactured by him, from any part of the kingdom to any other part.

30 G.3. c.40. By stat. 30 *G.* 3. *c.* 40. § 26. Tobacco-stalks stripped from the leaf may be removed by permit from any entered premises out of the limits of the bills of mortality to any place within those limits, subject to the regulations in the aforesaid act and this act specified.

29 G.3. c.68. Tobacco or snuff may be returned with a permit. By stat. 29 *G.* 3. *c.* 68. § 122. Any manufacturer or dealer who hath received into his stock by permit any tobacco or snuff, may return the same within 48 hours to the person from whom he received it, under certain regulations. But if found returned, or returning without permit, or shall not be the same identical tobacco or snuff which had been received, without any addition to, subtraction from, or alteration; the same shall be forfeited with the casks and package, which may be seized by officers of customs or excise, and the person who shall return the same shall forfeit 50*l.*

Not to be removed but during certain hours, except by common carriers. § 123. If any tobacco of 4 lbs. or upwards, or snuff of 2 lbs. or upwards, or any tobacco-stalks, &c., shall be found removing, unless between 7 in the morning and 5 in the evening from 29th *Sept.* to 25th *March*, and between 5 in the morning and 7 in the evening from 25th *March* to 29th *Sept.* (except by a common carrier or vessel usually travelling or navigating out of these hours,) the same shall be forfeited, with the casks and package, and the cattle, carriages, and vessels made use of in conveying the same, which may be seized by any officer of customs or excise, whether the same be accompanied with a permit or not.

48 G.3. c.84. Offering tobac- By stat. 48 *G.* 3. *c.* 84. § 7. If any person shall offer for sale tea, brandy, rum, geneva, or other foreign spirits, tobacco or snuff,



not exceed that sum, and if a moiety shall exceed *5l.* then a moiety of such value; which the commissioners of customs and excise are to cause to be paid; and the person so arresting shall also be entitled to such further reward as is given to any officer or non-commissioned officer of the army, navy, or marines, for arresting offenders. 48 G.3. c.84.

By stat. 1 & 2 *G.* 4. *c.* 109. § 2. Every person who shall deal in or retail, or intend and make entry to deal in or retail tobacco or snuff, shall, upon demand, receive from the proper officer of excise, a book or books for the purposes hereinafter-mentioned, and to be kept by every such dealer or retailer in some public and open part of his entered shop or premises, and no tobacco or snuff of any weight *not less than one pound*, or which shall *not exceed ten pounds*, shall be sold, sent out, or delivered by any dealer in or retailer to any person whatsoever, without a certificate filled up and cut out progressively from the printed forms of such certificates contained in such book, signed by such dealer or retailer, or some person on his behalf, certifying the date thereof, the quantity, quality, denomination, or sort, or kind, when sent out on order, and to whom sold, and from whose stock delivered; which certificate shall be firmly and permanently pasted on the outside cover or wrapper of such parcel or weight of tobacco or snuff as shall be specified in such certificate; and the dealer or retailer selling, sending out, or delivering any tobacco or snuff of any weight not less than one pound, or exceeding ten pounds, shall at the same time make a correspondent entry thereof, containing the same particulars, in such book as aforesaid (and that such tobacco or snuff when not sent out on order was sold and delivered to the purchaser on their retail premises); and such book, with such entries so made therein, shall at all times from the hour of seven of the clock in the morning until the hour of eight of the clock in the evening, lie open and exposed in the entered premises of such dealer or retailer, to the perusal of any officer of excise, and shall be delivered and given up by such dealer or retailer to any officer of excise, upon demand; and if any dealer or retailer shall at any one time retail or sell, send out or deliver, from his or her stock, any weight or quantity of tobacco or snuff not less than one pound, and which shall not exceed ten pounds, without being accompanied by such certificate pasted thereon as aforesaid, or without making such entry, or shall convey away or conceal any such book, or cancel, obliterate, destroy, or tear out any leaf therefrom, or entry therein, or shall make any false entry therein, or shall oppose, molest, obstruct, or hinder any officer of excise in inspecting any such book or any such entry therein, or shall at any time neglect or refuse, when required to deliver or give up to any officer such book, every person so offending shall for every such offence forfeit the sum of *50l.*, and all such manufactured tobacco and snuff so retailed or sent out shall be forfeited, and may be seized by any officer of excise; and the person or persons removing, carrying, or conveying the same, or who shall be or shall have been employed or concerned, or aiding or assisting therein, or in whose custody the same shall be found, shall forfeit the sum of *50l.*: Provided that every dealer or retailer shall send out every quantity of tobacco or snuff exceeding ten pounds at one time, accompanied with *a legal permit*, and not with or under such cer- 1 & 2 G. 4. c.109. Retailers of tobacco or snuff to receive from the officer of excise books containing certificates, to be filled up and sent out with every quantity of tobacco or snuff sold, of any weight not less than 1 lb. or not exceeding 10 lbs. Books subject to the inspection of the officer. Penalty for sending out such tobacco and snuff without certificate, neglecting to make entry in the book, obstructing officer, &c. *50l.* and articles forfeited. Persons assisting to forfeit *50l.* Tobacco or snuff exceeding 10 lbs. to be ac-

1 & 2 G.4. c.109.

tificate, on pain of forfeiting all such tobacco and snuff, which may be seized by any officer of excise.

By stat. 29 G. 3. c. 68. § 125. If any person shall counterfeit or forge any permit, he shall forfeit 500*l.*

companied with a permit.

29 G.3. c.68. Forging permits.

§ 149. If any person shall assault, resist, oppose, molest, obstruct, or hinder any officer in the due execution of this or any other act; or shall rescue any such goods which have been seized; or any vessel, horses, cattle, or carriages which have been forfeited, and for which no particular penalty is provided; he shall forfeit 200*l.* for each offence.

Obstructing officers.

Offering bribes.

§ 150. If any person shall give or offer any bribe, recompence, or reward to any officer to prevent him doing his duty, whether the same be accepted or not, he shall forfeit 500*l.*

Entry to be made before landing.

§ 152. No tobacco, &c. or snuff shall be landed, without first making entry thereof with the officers of the customs, on forfeiture thereof, with the casks and package.

Officers may search suspected places.

§ 153. If any officer of excise shall have cause to suspect that any tobacco, &c. or snuff, which shall have been imported contrary to this act, or forfeited by this or any other act, is deposited, lodged, hid, or concealed, if within *London* or *Westminster*, or the limits of the chief office, upon oath made before two commissioners, elsewhere upon oath made before one justice, setting forth the ground of his suspicion, such commissioners or justice may by warrant authorise such officer by day or night, but if in the night in the presence of a constable or other peace officer, to enter into such suspected place, and to seize and carry away all such tobacco, &c. or snuff which shall be there found, together with the casks and package containing the same. And if any person shall obstruct or hinder any such officer so authorised, or person assisting him in the execution of such warrant, he shall forfeit 100*l.*

Tobacco and snuff, taken as prize, are subjected to the regulation of this act, by 43 G. 3. c. 134. § 5.

No manufacturer or dealer to act as a magistrate.

§ 154. No manufacturer or dealer in tobacco or snuff, or person anywise interested or concerned therein, shall act as a magistrate in the execution of any act relating to tobacco or snuff; and all acts done by such person shall be utterly null and void.

12 G.1. c.28. 5 G.3. c.43. 8 G.1. c.18. Importing tobacco-stalks.

By stats. 12 G. 1. c. 28. § 13. — 5 G. 3. c. 43. § 4. 6. — 8 G. 1. c. 18. § 16. If any tobacco-stalks or stems stript from the leaf shall be imported, the same shall be forfeited and burned; and the officer seizing the same shall be allowed 1*d.* per pound; and every person who shall be assisting or otherwise concerned in unshipping the same, or to whose hands they shall knowingly come after unshipping, shall forfeit treble value, together with the vessels, bags, casks, or other things wherein the same are contained, and the horses, cattle, carts, and other carriages made use of in removing the same; half to the king, and half to such officer of the customs who shall seize, inform, or sue for the same.

52 G.3. c.159.

By stat. 52 G. 3. c. 159. Tobacco (and also liquors) derelict are subject to the duties of excise.

Regulations observed for securing duties on tobacco, or foreign spirits, derelict.

By § 2. Every person bringing into this kingdom, or finding on the coast of this kingdom, any foreign liquors or tobacco derelict, jetsam, flotsam, lagan, or wreck, in respect whereof any duty of customs or excise is imposed, shall, within 24 hours after he shall have so brought, &c. the same, if the same be found on land, or within 24 hours next after the same

e been landed, if found at sea, give notice thereof to the 52 G.3. c.159.
om-house or excise-office, or to some officer of customs
, specifying the place where the same are deposited;
proper officers shall forthwith take a particular account of
ors or tobacco, and shall demand of the person in whose
n they may be, or who shall have found or brought to
same, the duties of customs and excise due in respect
and in case the same shall not on such demand be paid.
officer shall cause such liquors or tobacco to be lodged
sited in a warehouse, under H. M.'s lock, until the duties
paid, or until they shall be sold; and if any person shall
o this kingdom, or find or discover on the coasts of this
, any foreign liquors or tobacco derelict, jetsam, flotsam,
wreck, in respect whereof any duty is imposed, and shall
such notice as aforesaid, he shall forfeit 100*l.*; and if any
all remove, open, or alter in quantity or quality, or cause
oved, &c. or aid or assist in the removing, &c. any such
r tobacco, or break, sever, or destroy, or cause to be
&c. or aid or assist in the breaking, &c. any of the cases
ges containing any such liquors or tobacco before taken
nt of by the proper officers, and before deposited as afore-
shall forfeit 100*l.*; and all such liquors and tobacco so Penalty.
, &c. with the casks and other packages containing the
all be forfeited, and may be seized by any officer: Pro-
at if the duties shall not be paid within 18 months next
said liquors and tobacco shall be so deposited, the com-
s of customs or excise may sell the same or any part
for satisfying the duties and expenses attending the con-
such warehouse, and of the keeping and sale thereof,
the overplus, after payment, to such person as shall be
ntitled to the same; and if upon such tobacco, &c. being
offered to sale, no person shall bid for the same as much
money than the duties, together with the warehouse-rent
nses, amount to, the commissioners may permit the per-
led to the same to dispose thereof for exportation only,
o the regulations in such cases, or if such persons refuse
then to dispose of such liquors or tobacco for export-
to destroy the same: Provided also, that nothing herein-
ontained shall extend to prevent any such liquors or to-
s the said commissioners may deem necessary for that
being sold duty free, for the payment of the salvage
.

he lord of the manor on which such liquors or tobacco Goods may be retained in custody of owner for one year, if bond entered in to for payment of duties.
found, having by law just claim thereto, or where no such
he manor shall exist, the person or persons bringing into
dom, or finding any such foreign liquor or tobacco, shall
erty to retain the same in his possession for one year and
from such bringing or finding thereof, on his entering
d with two sufficient sureties, to be approved of by the
fficer of customs or excise, in treble value, for the due
of the duties at the end and expiration of such year and
in default of such payment, to restore such liquors and
at the end or expiration of such year and day to the
fficer of the customs or excise in the same state as the same
t the *time of such bringing, &c.*

9 G.4. c.44. Penalties, &c. how levied.

By stat. 9 *G.* 4. *c.* 44. § 2. All penalties and forfeitures relating to the excise or customs are to be recovered, &c. according to the provisions of the stat. 7 & 8 *G.* 4. *c.* 53. (*Vide ante*, p. 60. *et seq.*)

§ III. (21.) Vinegar, Acetous Acid, and Verjuice.

[12 C. 2. c. 24. — 7 & 8 W. 3. c. 30. — 10 & 11 W. 3. c. 21. — 26 G. 3. c. 73. — 58 G. 3. c. 65. — 6 G. 4. c. 81. — c. 111. — 9 G. 4. c. 44.]

6 G.4. c.81. Vinegar-maker to be licensed.

By stat. 6 *G.* 4. *c.* 81. All former duties on excise-licences are repealed, and new duties imposed; *viz.* (*int. al.*) upon every licence required to be annually taken out by every maker of vinegar, or acetous acid, for sale, 5*l.*

58 G.3. c.65. Duties. Excise.

By stat. 58 *G.* 3. *c.* 65. All former duties of excise on vinegar, verjuice, &c. are repealed, and other duties imposed.

6 G.4. c.111. Customs.

By stat. 6 *G.* 4. *c.* 111. A duty is imposed in lieu of all former duties of customs.

10 & 11 W. c.21.

By stat. 10 & 11. *W.* *c.* 21. § 15. Thirty-four gallons shall be accounted a barrel of vinegar, according to the standard ale-quart.

Penalty on using any place without giving notice.

§ 14. If any vinegar-maker shall, without giving notice at the next excise-office, or to one of the commissioners, use any storehouse, warehouse, cellar, or other place, for making or keeping any vinegar, beer, or liquor preparing for vinegar, he shall forfeit 50*l.*

26 G.3. c.73.

And by stat. 26 *G.* 3. *c.* 73. (made perpetual by stat. 35 *G.* 3. *c.* 89.) § 56. Before any person shall be entitled to carry on the trade of a vinegar-maker, he shall make an entry with the proper officer of excise, of the brewhouse, buildings, yard, or place, for the carrying on such trade; and in such entry shall specify whether he be a maker of vinegar from malt or corn, or from melasses or sugar, or from any and what other materials; and every entry not conformable thereto shall be void.

Vinegar-maker

§ 55. No vinegar-maker from melasses or sugar, or from any

By stat. 7 & 8 *W.* 3. *c.*30. § 17. If any maker or retailer of vinegar shall, upon due request or demand made by the officer in the day-time, or if in the night with a constable, refuse to permit him to enter his house, storehouse, or other place belonging to or used by him, and to take account of the vinegar therein or any liquors prepared for vinegar, he shall forfeit 15*l.* 7 & 8 W.3. c.30. Refusing to admit the gauger.

By stat. 58 *G.* 3. *c.*65. § 10. Every officer of excise shall at all times upon his request, but if in the night to be accompanied by a supervisor or surveyor, be permitted to enter into the house, warehouse, and other place belonging to or used by any vinegar-maker for sale, and to take an account, by weight, measure, or gauge, as to such officer shall seem fit, of every liquor and material, and of all sulphuric acid in the possession of such maker; and if any person shall obstruct or prevent him from so doing, he shall forfeit 200*l.* 58 G.3. c.65.

By stat. 10 & 11 *W.* 3. *c.* 21. § 12. No vinegar-maker shall receive into his custody stale beer, returns of beer or ale, cyder, verjuice, or other liquors for making vinegar, nor deliver out any vinegar in casks or by the gallon, without notice first given to the officer, unless from *September* 29. to *March* 25. yearly, between seven in the morning and five in the evening, and from *March* 25. to *September* 29. between five in the morning and seven in the evening; on pain of 50*l.* 10 & 11 W.3. c.21. At what times only to receive liquors.

§ 13. On receiving such liquors into his custody, he shall show the same to the gauger before he mixes them with any other liquors, rape, or other materials; on pain of 20*l.* To be shown to the gauger.

By stat. 58 *G.* 3. *c.*65. § 11. No vinegar-maker for sale shall have or receive into his custody any vinegar or acetous acid, or any sugar-water, sugar-wash, melasses-water, melasses-wash, alegar, stale beer, returns of beer or ale, cyder, verjuice, or other liquor prepared or preparing for vinegar or acetous acid, or capable of being used as or applied to the purposes of vinegar or acetous acid, or any sulphuric acid, melasses, brown sugar, honey (except for his private family), or any pyrolignite or acetate of lime or soda, or other material (except corn or grain) fit or proper to be made into or mixed with vinegar or acetous acid, without giving 12 hours' previous notice thereof in writing to the officer of excise, under whose survey such maker shall be, specifying the day and time when the same will be received, and the quantity and description thereof, that the officer may be present to take account thereof, by weight, measure, or gauge; nor shall diminish, remove, or mix any part thereof with his stock, until the officer have taken account, nor afterwards employ any such materials uncharged with duty, without accounting for the same to the satisfaction of the officer, on pain of forfeiting for every offence 100*l.* 58 G.3. c.65. Vinegar-makers not to take into their custody vinegar, &c. or preparations for vinegar without giving 12 hours' notice to the officer, on penalty of 100*l.*

§ 12. No person shall sell or send out any fermenting or fermented wort or wash, not being fermented beer, charged with duty, to any person whatsoever; and no person not being an entered vinegar-maker shall sell or send out any vinegar or purified acetous acid, alegar, stale beer, stale ale, or stale cyder, verjuice, sugar-water, or melasses-water, or other liquors prepared or preparing for vinegar or acetous acid, or capable of being used as or applied to the purposes of vinegar or acetous acid, except to an entered vinegar-maker, under notice for receiving the same as No wort to be sent out, nor vinegar or preparation for vinegar, unless the duty has been paid, and accompanied with a permit.

58 G.3. c.65.

aforesaid, or without the duties hereby imposed being charged in respect of such vinegar, &c., and the same being accompanied with a permit or certificate as herein mentioned, on pain of forfeiting all such liquors, which may be seized by any officer of excise, with the cattle and carriages removing the same; and every person so offending or receiving such liquors shall forfeit 200*l*.

7&8W.3. c.30. Concealing.

By stat. 7 & 8 *W.3. c.*30. § 16. If any maker of vinegar for sale shall conceal or convey away any vinegar, or liquor preparing for vinegar, from the view of the gauger, he shall for every barrel forfeit 40*s*.

58 G.3. c.65. Vinegar or materials found concealed, or adulterated, shall be forfeited, and the offender shall also forfeit 100*l*.

By stat. 58 *G.3. c.*65. § 25. If any person shall remove, hide, or conceal any vinegar, or acetous acid, or liquors preparing for or capable of being used as or applied to the purposes thereof, or any material for making, rectifying, or purifying the same, subject to the duties, with intent to defraud the king; or shall adulterate or mix with vinegar or acetous acid any other acid (except sulphuric acid), in the proportion not exceeding 1,000th part thereof by weight, all such vinegar or acetous acid, liquors, and materials so removed, hidden, concealed, or adulterated, shall be forfeited, and may be seized by any officer of excise; and above such forfeiture, the person so offending, and every person assisting therein, shall forfeit 100*l*.

For the provisions of this act for trying the strength of vinegar by an acetometer, see § 8, 9.; and for regulating the mode of charging the stills, see § 13, 14.

10 & 11 W.3. c. 21. What deemed vinegar, &c.

By stat. 10 & 11 *W.3. c.*21. § 11. All stale beer, returns of beer or ale, cider, verjuice, or any other liquor proper to be made into vinegar, which shall be found in the possession of any common vinegar-maker, (except such as are to be drank in his family, and which shall be kept separate for that purpose,) shall be deemed vinegar, or liquors preparing for vinegar.

58 G.3. c.65. Liquors, of whatever kind,

By stat. 58 *G.3. c.*65. § 6. All liquors brewed or made, by whatsoever means or manner, into vinegar or acetous acid for sale, and all liquors prepared or preparing for or capable of being used

By stat. 12 *C.* 2. *c.* 24. § 29, 30, 31, 32. Every such vinegar-maker shall make entry once a month at the next excise-office of all liquors made within that month; and also, within a month after such entry, shall clear off the duties, on pain of double duties. 12 C. 2. c. 24. Entry and payment of the duty.

By stat. 9 *G.* 4. *c.* 44. § 2. All penalties, forfeitures, &c. relating to the excise or customs, are to be recovered, &c. according to the provisions of the stat. 7 & 8 *G.* 4. *c.* 53. (*Vide ante*, p. 60. *et seq.*) 9 G. 4. c. 44. Penalties, &c. how to be recovered.

§ III. (22.) Wine.

[28 H. 8. c. 14.—37 H. 8. c. 23.—12 C. 2. c. 25.—32 G. 2. c. 19.—26 G. 3. c. 59.—54 G. 3. c. 77.—57 G. 3. c. 123.—4 G. 4. c. 69.—6 G. 4. c. 81.—c. 111.—9 G. 4. c. 44.]

By stat. 6 *G.* 4. *c.* 111. Various duties of customs are imposed upon wines imported. 6 G. 4. c. 111. Duty on importation.

By stat. 4 *G.* 4. *c.* 69. § 19. it shall be lawful to import into *G. B.* any wine whatever, as well for sale as for private use, in packages each of which shall contain at least three dozen reputed quart-bottles or flasks, or six dozen reputed pint-bottles or flasks, on payment of the same duties, as well of customs as excise, as *French* wine is or shall be subject to, in such manner, and under and according to such and the like rules, regulations, conditions, and restrictions, and subject to such and the like penalties and forfeitures, as are provided and enacted in any act or acts of parliament with respect to *French* wine so imported into *G. B.*, so far as the same are applicable thereto. 4 G. 4. c. 69. Wine may be imported in packages of three dozen quart or of six dozen pint bottles, as well for sale as private use, upon payment of duty as French wine.

By stat. 6 *G.* 4. *c.* 81. § 1. all former duties on excise licences are repealed. 6 G. 4. c. 81.

§ 2. New duties are imposed upon every excise-licence required to be annually taken out by dealers in, and retailers of foreign wine; *viz.* Licences for selling foreign wine.

	£	s.	d.
Every dealer in foreign wine who shall not have an excise-licence for retailing spirits, and a licence for retailing beer - - - -	10	0	0
Every retailer of foreign wine, who shall have taken out a licence for retailing beer to be drank or consumed on his, her, or their premises, but shall not have taken out an excise-licence for retailing spirits to be so drank or consumed - -	4	4	0
Every retailer of foreign wine who shall have taken out excise-licences for retailing beer and spirits respectively, to be so drank or consumed (*a*) -	2	2	0

By stat. 26 *G.* 3. *c.* 59. § 11. Every person who shall have taken out a licence for retailing foreign wine, and who shall not take out a licence for retailing spirits or ale, shall be deemed a dealer by *wholesale*; but if he is licensed for retailing either spirits or ale, he shall be deemed a *retailer*. 26 G. 3. c. 59.

§ 14. And every *wholesale* dealer shall cause to be painted or written in large legible characters over the outer door, or in the front or on some conspicuous part of each house, &c. and other place by him used for the keeping of foreign wine for sale, the words *dealer in foreign wine*; on the penalty of 50*l.* for each such house, &c. Certain words to be put up.

(*a*) And see the several other provisions of this act as to the licences, fines, &c. inserted at length, *ante*, title Ale and Beer, p. 120. *et seq.*

26 G. 3. c. 59.

§ 15. If he shall put up those words on any unentered place, he shall forfeit 100*l.* and be subject to the penalties for selling foreign wine without entry.

32 G. 2. c. 19.

By stat. 32 *G.* 2. *c.* 19. § 3. Every *retailer* shall cause the word *wine* to be expressed either on a sign hung out, or in some visible place, or near the door in the front of his house, or other place made use of for the retailing of wine, to denote that such retailer is a dealer in wine, and liable to take out a licence for the retailing thereof; and if any person shall sell wine by retail without fixing or hanging out such token, he shall forfeit 10*l.*

26 G. 3. c. 59. Warehouses, &c. to be entered.

By stat. 26 *G.* 3. *c.* 59. § 12. Every dealer in foreign wine shall make entry in writing at the next excise-office of all warehouses, vaults, or other places by him made use of for keeping foreign wine for sale; on pain of forfeiture of the wine therein, and of the casks, bottles, and packages containing the same; and also of 100*l.* for every such place. But this shall not extend to wine sold whilst lying openly on the quay where first landed.

§ 13. When entry shall have been made by any dealer, no other dealer (not being in partnership with the dealer who made such first entry) shall on any pretence whatsoever make entry of the same, or of any other warehouse or place within the same house or tenement in which such first entry shall then be existing; but every person making such further entry shall be deemed a dealer in foreign wine without entry, and shall be subject to the like penalties as dealers in foreign wine without entry.

Officers may enter warehouses, &c. and take samples.

§ 17, 18. Any officer of excise may enter, upon his request, by day or night (but if in the night in the presence of a constable or other peace-officer), any place made use of for keeping wine by any dealer, either by wholesale or by retail, and by tasting, gauging, or otherwise (except wine in bottles) to take an account of all the wine in any vessels, except bottles, and also to take account of the wine in bottles in any other manner than by tasting the same, or by uncorking or opening the bottles, and also may take samples of the wine, whether in casks or bottles, paying for the

vessels; and the officer shall mark such casks and bins so shown to him; and if any person shall rub out or deface such mark; or if any dealer shall without notice given at the excise-office set up any vessel or utensil for keeping or containing of wine, or alter or enlarge any vessel, utensil, or bin already set up capable of holding three gallons, or shall have the same in any concealed or unentered place; he shall forfeit for every such bin, vessel, or utensil so set up and altered, 50*l.* 26 G. 3. c. 59. casks to be marked by him.

§ 22. Every wholesale dealer shall, before he begins to draw off or bottle any foreign wine, give six hours' notice in writing if within the bills, elsewhere twelve hours', to the officer of excise, of his intention to draw off or bottle any such wine, and the particular warehouse or place, and the quantity, and into how many casks or bottles the same is intended to be drawn, and what sort of wine, and from what particular cask or vessel; and such officer may attend if he think fit; and the same shall be packed or piled in the presence of such officer, if he attend, or an account thereof given to him upon his next survey. And no wine shall be removed from the place in which it shall have been so deposited without giving like notice, on the penalty of 50*l*; but not to extend to a small number of bottles drawn off more or less than is contained in such notice. Notice to be given when wine is intended to be drawn off.

§ 22. Provided, that if the dealer shall not begin and proceed to draw off or bottle such wine within one hour after the time mentioned in the notice, the same shall be void, and he shall give a fresh notice. See also stat. 42 *G.* 3. *c.* 93. § 5.

§ 22. But nothing herein contained shall extend to make it unlawful for any wholesale dealer to draw off or bottle any wine at his will and pleasure, for the purpose of immediately sending out the same, without giving notice. Exception.

§ 23. All foreign wine of different sorts shall be kept separate, on the penalty of 50*l*. Wine of different sorts to be kept separate.

By stat. 54 *G.* 3. *c.* 77. § 4. Every dealer in foreign wine shall keep all red wine, the produce of the *Cape of Good Hope*, separate, and in separate bins, casks, bottles, and divisions; and in like manner keep all white wine of the said settlement separate, and in separate bins, casks, bottles, and divisions; on pain of forfeiting 50*l*. 54 G. 3. c. 77. Red and white Cape wine to be kept separate by dealers.

§ 8. If any dealer in foreign wine shall mix red wine or white wine in his possession, of the produce of the *Cape of Good Hope*, with any other wine, he shall forfeit 300*l*. and the wine so mixed. Penalty for mixing Cape with other wine.

By stat. 26 *G.* 3. *c.* 59. § 24. All *retail* dealers who shall have in their custody any cider, spirituous or other liquors, shall keep the same separate and apart from foreign wine; on pain of forfeiting 10*s*. for every gallon of cider or spirits which shall not be so kept separate, together with such wine, cider, and spirits, and the cask, bottles, and packages containing the same; which may be seized by any officer of excise. 26 G. 3. c. 59. Cider and spirits to be kept separate from wine.

§ 29. All cider, sweets, *British*-made wine, mead, spirits, and other liquors whatsoever, found in any entered place for the keeping or selling of foreign wine by any wholesale dealer, shall be deemed and taken to be foreign wine within the meaning of this act, of the same sort as the wine with which it shall be kept; or if kept separate from any wine, then the same shall be deemed and taken as *French red wine*. Cider, &c. found amongst wine.

12 G.3. c.59.

No dealer in foreign wine to have sweets in his possession.

§ 25. But no dealer in or seller of foreign wine shall have in his possession any *British*-made *wine*, or *sweets*; on pain of forfeiting the same, and also 10*s.* a gallon.

57 G.3. c.128. No dealer in foreign wine, not being an entered dealer in spirits, shall have more than two gallons of spirits of wine at a time, or any other British spirits of greater strength than 20 per cent. under hydrometer proof. Penalty 100*l.*

By stat. 57 *G.* 3. *c.* 128. § 14. No dealer in foreign wine, not being an entered dealer in or retailer of spirits in *England*, shall have or receive into his custody any spirits of wine, exceeding two gallons at one time, or any *British* spirits, except spirits of wine, of a greater strength than twenty per centum under hydrometer proof; on pain of forfeiting such spirits, which may be seized by any officer of excise; and the person offending shall forfeit 100*l.*

26 G.3. c.59. An account to be kept of wine daily sold.

By stat. 26 *G.* 3. *c.* 59. § 26. For the better ascertaining the quantity of wine sold by dealers, every person who shall sell any foreign wine shall keep an account of the quantity sold, sent out, or consumed in each day under three gallons, expressing the number of gallons or bottles; and shall every day enter into a book to be kept for that purpose an account of the gross quantities sold, sent out, &c. the preceding day; and also in another book shall enter each parcel of three gallons or more which shall be sold or sent out in each day, expressing the number of gallons or bottles; which books are to be prepared by the commissioners, and delivered unto the dealer upon demand; but no dealer shall have above one book of each sort in his custody at one time; and when filled up, it shall be returned to the officer from whom it was received, and the truth of the entries shall be verified on oath by such dealer or his servant who kept the same and made the entries therein to the best of his knowledge and belief, to be administered by the officer; and a new book shall be thereupon delivered to the dealer, and so *toties quoties* as often as such book shall be filled up; and such book shall lie open to be perused by the officer; and the dealer shall, at the request of the officer, fill up such books respectively, with the quantity by him sold in each day. And every dealer or seller offending in any of the matters aforesaid, or making any false entry in any such books, shall forfeit 20*l.*

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without delay, if the person who hath the charge thereof at the time of the seizure, enter into recognisance with one surety before a neighbouring justice, in double the value of such seizure, to prove within one month next ensuing to the satisfaction of the commissioners of excise, that such wine through unavoidable accident could not be so delivered and received; and the justice shall certify upon the back of the permit that such recognisance hath been entered into, and also allow such further time for the wine to be delivered as to him shall seem meet; which indorsement shall have the same force as a permit granted according to this act; and the justice shall forthwith transmit every such recognisance to the king's remembrancer in the court of exchequer. 26 G. 3. c. 59.

By stat. 54 *G.* 3. *c.* 77. § 6. Every permit granted for the removal of wine, the produce of the *Cape of Good Hope*, shall distinguish such wine from all other wine according to the denomination in the request-note, according to the directions of 26 *G.* 3. *c.* 59. 54 G. 3. c. 77. Permits for removal to distinguish Cape from other wine.

By stat. 26 *G.* 3. *c.* 59. § 32. No wine shall be brought into any place made use of by any dealer in foreign wine without an authentic permit granted and given according to the directions of this act, which shall be produced to and left with the officer under whose survey such dealer shall then be, on pain of forfeiture thereof, together with the casks, bottles, and packages containing the same, and the said wine, &c. may be seized by any officer of excise. 26 G. 3. c. 59. Wine brought into warehouses without permit.

§ 33. Every private person (not being a dealer either by wholesale or retail) who shall have occasion to remove any foreign wine from one place to another shall have a permit from the officers of excise, on proof of payment of duties, and on a request-note, specifying the quantity and kind and number and contents of the vessels, and whether by land or water, and by what mode of conveyance; on pain of forfeiture thereof, with the casks, bottles, and package containing the same, and also the horses, cattle, carriages, or boats used in the removal thereof; and the same may be seized. Private persons removing wine to have a permit.

§ 37, 38. Where any permit shall have been granted to any dealer in wine, or private person as aforesaid, and he shall not actually and really send away the wine by such permit authorised, nor return the permit to the officer who granted the same, before the expiration of the time limited therein, he shall for every gallon of wine mentioned in such permit forfeit treble the value thereof, to be estimated according to the highest price of such sort of wine of the best quality in *London*. See also stat. 42 *G.* 3. *c.* 93. § 6. But if not removed, such permit to be returned.

§ 37. Where such permit shall not be by the dealer returned as aforesaid, and upon taking an account of the stock remaining in his hands there shall not appear a decrease to answer the wine mentioned in the permit, then and in such case such dealer shall forfeit the like quantity of wine so permitted and not removed, to be seized by the officer, out of any wine in his custody of the denomination given in the permit; but if he shall not then have such quantity of the same denomination in his custody, he shall forfeit 100*l.* Where the decrease in stock is not proportionate to the permit.

§ 39, 40. If any person shall counterfeit, or forge or cause to be so done, any such permit, or any certificate or indorsement of the recognisance required (by § 36.), or fraudulently alter or erase any permit or *certificate, &c., or knowingly* or willingly give or receive Using false permits, or forging recognisances, &c.

16 G. 3. c. 39. any false or untrue permit, &c., or publish or make use of the same, or receive the same with any wine, he shall forfeit 500*l.*

Hiding or concealing foreign wine. § 42. In case any foreign wine shall be fraudulently deposited, hid, or concealed with intent to defraud H. M. of the duties, the same shall be forfeited, together with the casks, bottles, and packages containing the same. And the better to enable the officers to make discovery thereof, if any officer shall have cause to suspect that any wine is so fraudulently deposited, hid, or concealed, if within *London* or *Westminster*, or the limits of the chief office of excise, upon oath made by such officer before two commissioners of excise, elsewhere before a justice, setting forth the grounds of his suspicion; such commissioners or justice respectively, before whom such oath shall be made, may by warrant empower such officer, by day or night (but if in the night in the presence of a constable or other peace-officer), to enter such suspected place, and to seize and carry away such wine which shall be found so concealed as forfeited, together with the casks and packages.

Obstructing or attempting to corrupt officers. § 44, 45. If any person shall assault, resist, oppose, molest, obstruct, or hinder any officer in the due execution of this act; or shall rescue any foreign wine after seizure; or stave, break, destroy, or damage any cask, vessel, bottle, or other package, whilst any officer is attempting to seize the same; or shall offer to bribe or corrupt any officer to do contrary to his duty, whether such offer be accepted or not; he shall forfeit 100*l.* for every offence.

Opening wine sealed for exportation. § 47. If any person (except the proper officer) shall open any package of foreign wine sealed for exportation, or shall wilfully destroy or deface the seal or mark, he shall forfeit 50*l.*

Landing wine which has been shipped. § 48. Provided, that if any wine so shipped for exportation shall be unloaded, or laid on land (shipwreck, &c. excepted), the same, or the value thereof, shall be forfeited, above the penalty in any bond which may have been given.

Officers not entitled to rewards § 50. But no officer of the customs shall be entitled to any reward for any seizure, unless he give notice thereof within 12 hours

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lord privy seal, and two chief justices, or any three of them, shall yearly, between *Nov.* 20. and *Dec.* 31., set the prices of foreign wine sold in gross; so that proclamation be made thereof in term-time in the court of chancery, or in the town where they shall be sold; and if any person shall offend against the said assessment, he shall forfeit for every vessel 40*s.*, half to the king, and half to the mayor, if in a town corporate; and if not to him that shall sue. 28 H. 8. c. 14. 37 H. 8. c. 23. 12 C. 2. c. 25.

And by stat. 28 *H.* 8. *c.* 14. § 14. The justices of the peace, and mayors may hear and determine the faults of such offenders, and punish them by imprisonment or otherwise, by their discretions. 28 H. 8. c. 14.

By stat. 37 *H.* 8. *c.* 23. § 3. If any person shall refuse to sell at the prices limited, the mayor and recorder, and two ancient aldermen in *London*, being no vintners, and the mayor, aldermen, and other head officers elsewhere, or any two of them, whereof the mayor or chief alderman to be one, may enter and sell the same to the owner's use. 37 H. 8. c. 23.

By stat. 12 *C.* 2. *c.* 25. § 11. No person selling wine shall mix wines together, nor with any other thing; on pain that the seller in gross shall forfeit 100*l.* and the retailer 50*l.*, half to the king, and half to him that shall sue in any court of record. 12 C. 2. c. 25. Adulterating wines.

By stat. 9 *G.* 4. *c.* 44. § 2. All penalties and forfeitures relating to the excise or customs are to be recovered, &c. according to the provisions of the stat. 7 & 8 *G.* 4. *c.* 53. (*Vide ante*, p. 60. *et seq.*) 7 G. 4. c. 44. Penalties, &c. how to be recovered.

§ III. (23.) Wire.

[6 G. 4. c. 81.—c. 111.—7 G. 4. c. 53.]

By stat. 6 *G.* 4. *c.* 111. Certain duties of customs are imposed upon wire imported. 6 G. 4. c. 111. Duties. Customs.

By stat. 7 *G.* 4. *c.* 53. § 6. All former duties of excise upon gold and silver wire, and gold and silver thread, and lace, are repealed. 7 G. 4. c. 53. Excise-duties repealed.

By stat. 6 *G.* 4. *c.* 81. Every wire-drawer or other person who shall draw or cause to be drawn any gilt or silver wire, commonly called big wire, shall take out an annual licence, for which he shall pay a duty of 2*l.* 6 G. 4. c. 81. Licence.

By stat. 7 *G.* 4. c. 53. § 6. All the provisions of the stat. 10 *Ann.* *c.* 26. which regulated the trade or business of wire-drawers are repealed. 7 G. 4. c. 53.

N. B.—All proceedings for the recovery of penalties, &c. under the laws relating to the Customs and Excise are regularly instituted and conducted by the proper officers, under the direction and control of the Commissioners, who supply their own forms of Informations, Summonses, Convictions, and Warrants, for which they are of course responsible, and will not permit an Information to be laid, or a Conviction to be drawn out, except in their own forms.

Execution.

WHERE a person attainted hath been at large after his attainder, and afterwards is brought into court and demanded why execution should not be awarded against him, if he deny that he is the same person, it shall immediately be tried by a jury returned for that purpose. 2 *Haw. c.* 51. § 3. — *Vide Ratcliff's case, Fost.* 40, 41. 1 *Bla. R.* 3. S. C.; but see Lord *Kenyon's* observations in this case in *Duberley* v. *Gunning, Peake's C. N. P.* 98.

The court may command execution to be done, without any writ. 2 *Haw. c.* 51. § 4.

In fixed and stated judgments, the law makes no distinction between a peer and a commoner; or between a common and ordinary case, and one attended with extraordinary circumstances; for which reason it was adjudged in *Felton's* case, who murdered the Duke of *Buckingham*, that the court could not order his hand to be cut off, nor make it part of the sentence that his body should be hanged in chains, but that the body after execution, being at the king's disposal, might be hung in chains, or otherwise ordered as the king should think fit. 2 *Haw. c.* 48. § 2.

An execution cannot be lawfully executed by any but the proper officer. 2 *Haw. c.* 51. § 6. 2 *Hale*, 411.

It must be done pursuant to the judgment, and cannot be altered by the king, as from beheading to hanging. *Hale's Sum.* 272. 2 *Hale*, 411.

But the king may pardon part of the execution; as in treason he may pardon all but the beheading. *Hale's Sum.* 272. 2 *Hale*, 412.

He may alleviate, but cannot aggravate, punishment beyond the intention of the law. *Fost.* 269.

It is clear that if a man, condemned to be hanged, come to life

No sheriff nor other the king's officer.] Under these words, the law beginning with the *sheriffs*, are understood escheators, coroners, bailiffs, gaolers, and other *inferior officers* of the king, whose offices were instituted before the making of this act, which do any way concern the administration or execution of justice, or the common good of the subject, or for the king's service. 2 *Inst.* 209.

Also the justices of the peace, whose office was instituted after this act, are bound by their oath of office to take nothing for their office of justice of the peace to be done, but of the king, and fees accustomed, and costs limited by statute.

And, generally, no public officer shall take any other fees or rewards for doing anything relating to his office than some statute in force gives him, or else as hath been anciently and accustomably taken; and if he do otherwise, he is guilty of extortion. *Dalt.* c. 41. 1 *Russ.* 222.

But where a person was appointed collector of certain duties under stat. 43 *G.* 3. *c.* 99. by the proper constituted authorities, and considered himself and was considered by those authorities to be such collector, but whose appointment was informally made, it was decided that he could not be indicted at common law for the receipt of duties *by colour and pretence of being collector* of such duties, though the money were fraudulently collected and misapplied by him, because he was in fact appointed collector, and in that character received the money. *R.* v. *Dobson.*—7 *East*, 218.

Shall take any reward.] Therefore, by this statute, they can at this day take no more for doing their office than hath been since allowed to them by authority of parliament. 2 *Inst.* 210.

All prescriptions which have been contrary to this statute, and to the common law, in affirmance of which it is made, have been always holden to be void. 1 *Haw.* c. 68. § 2.

It has been resolved, that a promise to pay them money for doing of a thing, which the law will not suffer them to take any thing for, is merely void. 1 *Haw.* c. 68. § 2.

To do his office.] It is not said, that he shall take no reward generally, but no reward to do his office: thus the fee of 20*d.* called bar-fee, time out of mind taken by the sheriff of every prisoner that is acquitted, is not against this statute; for it is not taken for doing his office. 2 *Inst.* 210.; but see stat. 14 *G.* 3. *c.* 20. *post*, and 55 *G.* 3. *c.* 50. § 4. *post*, tit. Gaols, &c. § IV.

But there seems to be no necessity for this distinction; for it cannot be intended to be the meaning of the statute to restrain the courts of justice, in whose integrity the law always reposes the highest confidence, from allowing reasonable fees for the labour and attendance of their officers; the chief danger of oppression is from officers being left at their liberty to set their own rates on their labour, and make their own demands; but there cannot be so much fear of these abuses, while they are restrained to known and stated fees settled by the discretion of the courts, which will not suffer them to be exceeded, without a proper resentment. 1 *Haw.* c. 68. § 3.

But in the ecclesiastical court a person was libelled against for fees, and upon motion a prohibition was granted, for that it was holden that no court had a power to establish fees: the judge of

a court may think them reasonable, but that is not binding; but if on a *quantum meruit* a jury think them reasonable, then they become established fees. *Gifford's case*, 1 *Salk*, 333.

The fees in sessions, for traversing, trying, or discharging indictments, discharging recognisances, and the like, do vary according to the different customs in different places. *Dalt. c.* 41.

Shall yield twice as much.] At the common law this offence is severely punishable at the king's suit by fine and imprisonment, and also by a removal from the office in the execution whereof it was committed. And this statute doth add a greater penalty than the common law did give; for hereby the plaintiff shall recover his double damages. 2 *Inst.* 210. 1 *Haw. c.* 68. § 5.

El. c. 5. And by stat. 31 *El. c.* 5. Actions for extortion may be laid in any county.

At the king's pleasure.] That is, by the king's justices, before whom the cause depends. 2 *Inst.* 210.

Indictment for Extortion in a Gaoler.

County of ——— } *THE jurors for our lord the king upon their oath present, that* A. O. *late of* ——— *in the said county, yeoman, on the* —— *day of* ——, *in the* —— *year of the reign of* ——, *was taken up on suspicion of having committed a certain felony, by* —— *constable of* —— *in the said county, by virtue of a warrant directed to the said* ——— *under the hand and seal of Sir* William Dalston, *knight, then and yet one of the justices of our sovereign lord the king assigned to keep the peace in the said county, and was on the same day in the year aforesaid committed by him the said Sir* William Dalston *to* A. G. *keeper of the gaol of our said sovereign lord the king at* ——— *in the said county, under the custody of him the said* A. G. *to be safely kept, upon suspicion of the felony aforesaid, and the said* A. O. *was detained in that prison under the custody of the said* A. G. *from the time that he was committed to the said prison for one month from thence next ensuing, upon suspicion of the said*

ing at the assizes that were then next to be holden in and for the said county, when in fact the said A. I. *was not returned by the sheriff of the said county in any panel of jurors, and also when indeed no such sum of money was due to the said* A. B. *for his fee for excusing the attendance or appearance of the said* A. I. *at the assizes aforesaid, to the evil example of other offenders, to the great damage of him the said* A. I., *and against the peace of our said lord the king, his crown and dignity.*

False Pretences. False Tokens. } See vol. i. tit. Cheat.

Fast-Days.

BY stat. 2 & 3 *Ed.* 6. *c.* 19. For the encouragement of the fisheries, and the increase of cattle, and stat. 5 *El. c.* 5., intituled *An act touching politic constitutions for the maintenance of the navy,* and by stat. 35 *El. c.* 7. certain restrictions were imposed with regard to eating on certain fast-days; but these statutes have long since fallen into disuse, and may be deemed obsolete.

Fees. See Extortion.

Felo de se. See Homicide.

Felony, &c.

I. *Felony.*
[14 G. 3. c. 20.]

II. *Misprision of Felony.*

III. *Theftbote, or compounding.*

IV. *Rewards for apprehending Felons.*
[5 Ann. c. 31.—4 & 5 W. 3. c. 8.—6 & 7 W. 3. c. 17. —3 G. 1. c. 15. —6 G. 1. c. 13. —c. 23.— 8 G. 1. c. 18.— c. 23. — c. 28. — 8 G. 2. c. 16. — 9 G. 2. c. 35.—14 G. 2. c. 6.—15 G. 2. c. 28.—16 G. 2. c. 15. —8 G. 3. c. 15.—24 G. 3. *c.* 56.— 58 G. 3. c. 70.]

As to trials of felonies committed on board vessels employed on inland navigations, stage-coaches, and stage-waggons, &c., or on the boundaries of counties, see tit. Indictment, Vol. III.

I. Felony.

FELONY is supposed by some to come from the *Saxon fel,* which signifieth fierce or cruel; of which the verb *fell* signifieth to throw down or demolish; *and the* substantive of that name is used Definition.

to signify a mountain rough and uncultivated. But the same word, with a little variation, runneth through most of the *European* languages, and signifieth more generally an offence at large; and the *Saxon* word *fællan* signifieth to offend, and *fellnissæ* an offence or failure; and although *felony*, as it is now become a technical term, signifieth in a more restrained sense an offence of a high nature, yet it is not limited to *capital* offences only, but still retaineth somewhat of this larger acceptation; for petit larceny is felony, although it is not capital.

According to Sir *Henry Spelman*'s observation, it signifies such an offence for which, during the feudal institution, a man should lose or forfeit his estate; which he derives of two northern words, *fee*, which signifies the fief, feud, beneficiary estate, and *lon*, which signifies price or value.

It would swell this title nearly to the size of half the book, to set down every thing which may be comprehended under the word *felony*; therefore it is necessary to refer the consideration of the several particular kinds of felonies to their respective titles; as, for instance, *Burglary*, *Coin*, *Forgery*, *Homicide*, *Rape*, *Robbery*, and many others; and especially the law relating to stolen goods of all kinds belongs to title *Larceny*.

The method of bringing a felon to justice, from the first commission of the felony to his condemnation and execution, is treated of under the several titles of *Appeal*, *Arraignment*, *Arrest*, *Attainder*, *Bail*, *Clergy*, *Commitment*, *Confession*, *Evidence*, *Examination*, *Execution*, *Forfeiture*, *Gaol*, *Hue and Cry*, *Indictment*, *Judgment*, *Jurors*. And the course and whole procedure of trying an offender is treated of under the title Sessions, Vol. V.

The method of confining offenders to hard labour in penitentiary houses, or in vessels upon navigable rivers instead of transportation, is treated of under the title of Transportation.

As to the charge of Commitment, see that title, Vol. I. § IV.

Allowance of expenses of prosecutions, see tit. Costs, Vol. I.

[redacted]

II. Misprision of Felony.

Misprision of felony (from the *French* word *mespris*, a neglect or contempt,) is the concealing of a felony which a man knows, but never consented to; for if he consented, he is either a principal or accessary in the felony, and consequently guilty of misprision of felony, and more. 3 *Inst.* 36. 1 *Hale*, 374.

For it is said that every felony includes misprision of felony, and may be proceeded against as a misprision only, if the king please. 1 *Haw. c.* 59. § 1.

The punishment of misprision of felony in a common person, is fine and imprisonment; in an officer, as sheriff or bailiff of liberties, imprisonment for a year, and ransom at the king's pleasure, by the statute of *Edw.* 1. *c.* 9.

If any person will save himself from the crime of misprision, he must discover the offence to a magistrate with all speed that he can. 3 *Inst.* 140.

Misprision in a larger sense is used to signify very considerable misdemeanor, which hath not a certain name given to it in the law.

III. Theftbote or Compounding.

Theftbote (from the *Saxon* words *theft* and *bote*, boot or amends) is, where one not only knows of a felony, but takes his goods again, or other amends, not to prosecute. 1 *Haw. c.* 59. § 5. 1 *Russ.* 210.

But the bare taking of one's own goods again, which have been stolen, is no offence, unless some favour be shown to the thief. 1 *Haw. c.* 59. § 7.

This offence is very nearly allied to felony, and is said to have been anciently punished as such; but at this day it is punishable only with ransom and imprisonment, unless it were accompanied with some degree of maintenance given to the felon, which makes the party an accessary after the fact.

IV. Rewards for apprehending Felons. (*a*)

58 G. 3. c. 70. Rewards on convictions of certain crimes abolished.

By stat. 58 *G.* 3. *c.* 70. The several rewards allowed by the five undermentioned statutes are abolished.

1. By 4 *W. & M. c.* 8. § 2. 40*l.* on the conviction of every highwayman.

2. By 6 & 7 *W.* 3. *c.* 17. § 9. 40*l.* on the conviction of a person who has counterfeited or clipped the coin, or has brought into the kingdom clipped or counterfeit coin.

3. By 5 *Ann. c.* 31. § 1. 40*l.* on the conviction of every burglar or house-breaker.

4. By 14 *G.* 2. *c.* 6. § 2. 10*l.* on the conviction of every sheep-stealer, &c.

5. By 15 *G.* 2. *c.* 28. § 7. 40*l.* on the conviction of any person of treason or felony, relating to the coin upon this act; and 40*l.* upon conviction for counterfeiting copper money.

(*a*) *See title* Costs, Vol. I.

1 W. & M. c. 8. Apprehending Highwaymen.

But by stat. 4 *W. & M. c.* 8. § 3. If any person be killed in endeavouring to apprehend a highwayman, the sheriff shall pay the sum of 40*l.* to the executors or administrators of the person so killed, immediately upon the delivery of a certificate to him under the hand and seal of the judge of assize for the county where the fact was done, or of the two next justices of the peace, of such person being so killed.

And by § 6. As a further reward, every person so apprehending and prosecuting shall have the horse, furniture, and arms, money, or other goods, of the robber, that shall be taken with him, notwithstanding any right of the crown, or of the lord of the manor, or of those who lend or let the same to hire to such robber. But this shall not take away the right of any person to such horse, &c. from whom the same was before feloniously taken.

6 & 7 W. 3. c. 17. For discovering coiners.

By stat. 6 & 7 *W.* 3. *c.* 17. § 12. If any person being out of prison shall be guilty of clipping, coining, counterfeiting, washing, &c. the gold or silver coin of this realm, and afterwards discover two or more persons who have committed any of the said crimes, so as two or more be convicted, he shall have the king's pardon; and if he be an apprentice, he shall be made a freeman.

15 G. 2. c. 28.

By stat. 15 *G.* 2. *c.* 28. § 8. The king's pardon is also offered in like manner to persons under similar circumstances, who discover two or more offenders in altering sixpences or shillings to make them look like half guineas or guineas; or altering farthings or halfpence to make them look like sixpences or shillings; or counterfeiting brass or copper halfpence or farthings; or uttering false money.

5 Ann. c. 31.

By stat. 5 *Ann. c.* 31. § 2. If any watchman or other person be killed in endeavouring to apprehend any burglar or housebreaker, his executors or administrators shall have a certificate under the hand and seal of the judge, or of the two next justices of the peace, of such person being so killed, (which certificate they shall



§ 3. Nothing herein contained shall extend to take away from or deprive the executors or administrators of any person or persons who shall happen to be killed by any robber endeavouring to apprehend or in making pursuit after him, of any reward or rewards to which the executors or administrators of any person or persons so happening to be killed would be entitled by stat. 4 *W. & M. c.* 8.; nor to deprive any person or persons of the horse, furniture and arms, money or other goods, of any robber or robbers, and which by the same statute are directed to become the property of any person or persons who shall take, apprehend, prosecute, or convict any such robber as therein mentioned; nor shall any thing herein contained extend or be construed to extend to deprive the executors or administrators of any watchman or any other person who shall happen to be killed by any burglar or housebreaker in endeavouring to apprehend or in making pursuit after him or them, of any reward or rewards to which such executors or administrators would be entitled by virtue of stat. 5 *Ann. c.* 31.

58 G. 3. c. 70.

Saving to the executors of persons killed by robbers, &c.

By stat. 16 *G.* 2. *c.* 15. § 3.—8 *G.* 3. *c.* 15.—24 *G.* 3. *c.* 56. § 5. 13. Whoever shall discover, apprehend, and prosecute to conviction any felon or other offender ordered for transportation, or who has agreed to transport himself, and who shall be afterwards at large in *G. B.*, without some lawful excuse, before the expiration of the term, shall be entitled to a reward of 20*l.* for every such offender, and shall have the like certificate as those who prosecute highwaymen to conviction.

16 G. 2. c. 15.
8 G. 3. c. 15.
24 G. 3. c. 56. Convicts.

By stat. 6 *G.* 1. *c.* 23. § 9. Whoever shall discover, apprehend, and prosecute to conviction of felony without benefit of clergy, any person for taking money or other reward to help persons to their stolen goods, (such offender not having apprehended the felon who stole the same, and brought him to trial, and given evidence against him,) shall be entitled to a reward of 40*l.* for every offender so convicted; and shall have the like certificate and payment as persons who apprehend, &c. highwaymen.

6 G. 1. c. 23. Stolen goods.

By stat. 9 *G.* 1. *c.* 28. Whoever shall prosecute to conviction any persons opposing the execution of process in a place called *Suffolk Place*, or the *Mint* in *Surrey*, shall be entitled to a reward of 40*l.* for every offender, &c. as in the case of robberies, &c.

9 G. 1. c. 28. Opposing process in the Mint.

And by stat. 8 *G.* 1. *c.* 18. § 7. Runner of foreign goods who shall within two months after his offence (and before his conviction), discover two or more of his accomplices to the commissioners of the customs or excise, so as the value of the goods recovered for the use of H. M. exceeds the sum of 50*l.*, shall have, on conviction of the accomplices, 40*l.* for each offender, and pardon.

8 G. 1. c. 18. Runner of foreign goods.

§ 8. Any person discovering such offender or offenders within three months after the offence is committed, so as the value of the goods recovered for the use of H. M. on such discovery exceeds the sum of 50*l.*, shall upon conviction receive 40*l.* over and above any other reward on account of the goods seized.

Parish and ward offices within the parish or ward.] Where a parish is part of a manor, the certificate does not exempt from offices relating to the manor. *Rex* v. *Derbyshire*, 2 *Burr.* 1182.

But when a parish consists of several *townships*, the exemption

extends to the officers of the respective townships. *Mosely* v. *Stonehouse*, 7 *East*, 174.

Rex v. *Davies*, *E.* 29 *G.* 2. MS. (D.) Motion to quash a conviction and the affirmance of it on appeal removed into the K. B. by *certiorari*, upon this case. The defendant, being assignee of a certificate under this act, was appointed by the trustees under an act of the 22 *G.* 2. to be collector of the parish rates for the repair of the roads within the parish of *St. Leonard's, Shoreditch*, and refusing to take the office upon him, insisting that he was exempted by the benefit of his certificate, he was convicted before a justice; and this conviction being affirmed upon appeal to the sessions, it was now moved to quash those proceedings as illegal. After argument on showing cause: — By *Ryder* Ch. J. The question is, whether the defendant has a right to be exempted from this office by virtue of his certificate? The act exempts the party and his assignee from all parish and ward offices. Here are two questions: First, Whether this be a parish office? Secondly, Whether it be within this act? And though the latter may seem to be a consequence of the former, yet it may be necessary to consider whether this is the old office of surveyor or a new office. It is not necessary for a parish officer to be chosen by the parishioners. A parish office must be exercised about parish business; and the officer must be a parishioner; both which ingredients are here. It may be a question of nicety whether this act extends to new offices; though I give no opinion as to this point. The office is not co-extensive with that of surveyor; but yet it seems part of that old office. It cannot be presumed that the 22 *G.* 2. meant to take away any privilege which the party had before. Therefore as I do not think this a new office, I think the conviction and affirmance thereof ought to be quashed; without giving any opinion, whether the exemption will extend to a new office, which did not exist at the time of the 10 & 11 *W.* — *Dennison* J. The question is, Whether the collector of the parish rates

offices by the toleration act, are exempt from new offices as well as old ones. — *Wilmot* J. The words of the act of 10 & 11 *W.* are as general as can be. Nothing can more contribute to the public safety than apprehending felons, which is the object of the act. It is not necessary to give an opinion; but I take it, if this had been a new office, it would have been within the exemption. This office has every badge of a parish office. It must be exercised by a parishioner within the parish; the rates are to be applied to a parochial purpose; and I think it not necessary that a parish officer should be appointed by the parish, as the constable is a parish officer, though not named by the parish. Nothing can be clearer than that this is part of the old office of surveyor. Therefore the conviction and affirmance thereof were quashed. See **Forfeiture**, *post*. R. v. Davies.

Information against a Person for Felony.

County of ——— } *THE information and complaint of* A. I. *of* ——— *in the county of* ———, *yeoman, made on oath before me,* J. P. *esquire, one of his majesty's justices of the peace for the said county, the* ——— *day of* ——— *in the year* ———, *that yesterday in the night or early in the morning of this day divers goods of him the said* A. I. *to wit,* ——— *have feloniously been stolen, taken, and carried away from the house of him the said* A. I. *at* ——— *aforesaid in the county aforesaid, and that he hath just cause to suspect and doth suspect that* A. O. *late of* ———, *labourer, feloniously did steal, take, and carry away the same:* [or otherwise as the case shall be:] *And thereupon he the said* A. I. *prayeth that justice may be done in the premises.*

A. I.

Before me,
J. P.

Warrant for Felony.

County of ——— } To ———, the constable of ———.

FORASMUCH as A. I. of ——— *in the county of* ———, *yeoman, hath this day made information and complaint upon oath before me* ———, *one of his majesty's justices of the peace for the said county, that this present day divers goods of him the said* A. I., *to wit,* ——— *have feloniously been stolen, taken, and carried away from the house of him the said* A. I. *at* ——— *aforesaid in the county aforesaid, and that he hath just cause to suspect and doth suspect that* A. O. *late of* ———, *labourer, feloniously did steal, take, and carry away the same:* [or otherwise as the case shall be.] *These are therefore to command you forthwith to apprehend him the said* A. O., *and to bring him before me to answer unto the said information and complaint, and to be further dealt withal according to law. Herein fail you not. Given under my hand and seal the* ——— *day of* ——— *in the year* ———.

The form of a commitment for felony. See Commitment, Vol. I. The form of a search warrant for stolen goods; see Search Warrant, Vol. V.

Feme Covert. See Wife, vol. v.

Fern: Burning of it in Forests. See Burning, vol. i.

Fines and forfeited Recognisances.

See Estreat, Vol. I. and Recognisance, Vol. V.

[22 & 23 C. 2. c. 22. — 3 G. 4. c. 46. — 4 G. 4. c. 37.]

The king is *creditor pœnæ*, and all fines for offences belong to him. *Per Cur. Dr. Groanvelt's case*, 3 *Salk.* 265.

22 & 23 C. 2. c. 22. Process for levying.

BY stat. 22 & 23 *C.* 2. *c.* 22. § 10. Where any fine or forfeiture shall be paid to any sheriff, clerk of assize, clerk of the peace, or other officer, and be certified and estreated into the exchequer, process shall be awarded to the sheriff against such person for levying the same.

3 G. 4. c. 46. Preamble.

By stat. 3 *G.* 4. *c.* 46. § 1. After reciting stat. 22 & 23 *C.* 2. *c.* 22, intituled *An act for the better and more certain recovery of fines and forfeitures due to his majesty*, which act was made perpetual

aforesaid provisions contained in the said act of *C.* 2., and likewise so much of the said act 41 *G.* 3., as relates to the annual payment of all fines, forfeitures, and penalties, or such parts thereof as shall be due to the king, imposed and received by any justice out of sessions, and not made payable to any body or bodies corporate, or any commissioners of any public board, or any other person or persons, into the hands of the sheriff previous to the *Michaelmas* sessions; and also so much of the said act of the 41 *G.* 3. as requires such justices, previous to the *Michaelmas* sessions yearly to transmit to the clerk of the peace, or town-clerk where such fine was imposed, an account in writing of all such fines, shall be and are hereby repealed. 3 G. 4. c. 46.

§ 2. Enacts, that from and after the 29th day of *September*, 1822, all fines, issues, amerciaments, forfeited recognisances, sum or sums of money paid or to be paid in lieu or satisfaction of them or any of them, (save and except the same shall, by virtue of any act or acts of parliament made or to be made, be otherwise directed to be levied, recovered, appropriated, or disposed of,) which already are or hereafter shall be set, imposed, lost, or forfeited by or before any justice or justices of the peace in that part of the U. K. called *England*, shall be and are hereby required to be certified by the justice or justices of the peace by or before whom any such fines, issues, amerciaments, forfeited recognisances, sum or sums of money paid or to be paid in lieu or satisfaction of them or any of them, shall be set, imposed, lost, or forfeited to the clerk of the peace of the county, or town-clerk of the city, borough, or place, in writing, containing the names and residences, trade, profession, or calling of the parties, the amount of the sum forfeited by each respectively, and the cause of each forfeiture, signed by such justice or justices of the peace, on or before the ensuing general or quarter sessions of such county, city, borough, or place respectively; and such clerk of the peace or town-clerk shall copy on a roll such fines, issues, amerciaments, forfeited recognisances, sum or sums of money paid or to be paid in lieu or satisfaction of them or any of them, together with all fines, issues, amerciaments, forfeited recognisances, sum or sums of money paid or to be paid in lieu or satisfaction of them, or any of them, imposed or forfeited at such court of general or quarter sessions, and shall, within such time as shall be fixed and determined by such court, not exceeding 21 days after the adjournment of such court, send a copy of such roll, with a writ of *distringas* and *capias*, or *fieri facias* and *capias*, according to the form and effect in the schedule marked (A) annexed to this act, to the sheriff of such county, or the sheriff, bailiff, or officer of such city, borough, or place having execution of process therein respectively, as the case may be, which shall be the authority to such sheriff of such county, or the sheriff, bailiff, or officer, as the case may be, for proceeding to the immediate levying and recovering of such fines, issues, amerciaments, forfeited recognisances, sum or sums of money to be paid in lieu or satisfaction of them, or any of them, on the goods and chattels of such several persons, or for taking into custody the bodies of such persons, in case sufficient goods and chattels shall not be found whereon distress can be made for recovery thereof; and every person so taken shall be lodged in the common gaol until the next

Statements of fines, &c. to be forwarded to the clerk of the peace by the justice by whom such fine, &c. is imposed.

Clerk of the peace to copy on a roll such fines, &c. at quarter sessions, and send a copy of such roll with writ of distringas, &c. to the sheriff, &c.

3 G. 4. c. 46.

general or quarter sessions of the peace, there to abide the judgment of the said court.

Clerk of the peace or town-clerk to make oath as to all fines, &c. which shall be paid.

§ 3. Enacts, that the clerk of the peace or town-clerk shall, before he shall deliver the roll to such sheriff, bailiff, or officer, containing the fines, issues, amerciaments, forfeited recognisances, sum or sums of money paid or to be paid in lieu or satisfaction of them or any of them, and is hereby required to make oath before any justice of the peace for the county, riding, city, borough, or place for which such clerk of the peace or town-clerk shall act; which oath shall be indorsed on the back of the writ, or of the said roll attached thereto, such clerk of the peace or town-clerk stating therein all such fines, issues, amerciaments, forfeited recognisances, sum or sums of money which shall have been paid or otherwise accounted for; and such oath shall be made in the form following: —

Form of oath.

I ——— *make oath that this roll is truly and carefully made up and examined, and that all fines, issues, amerciaments, recognisances and forfeitures, which were set, lost, imposed, or forfeited, and in right and due course of law ought to be levied and paid, are, to the best of my knowledge and understanding, inserted in the said roll, and that in the said roll are also contained and expressed all such fines as have been paid to, or received by me, either in court or otherwise, without any wilful or fraudulent discharge, omission, misnomer, or defect whatever.*

So help me GOD.

Notice to be given to the sureties.

§ 4. Enacts, that each and every justice of the peace before whom any recognisance shall be entered into or taken, shall and is hereby required to give, or cause to be given, at the time of entering into such recognisance, to the person or persons, surety or sureties so entering into the same, and to each of them, a written or printed paper or notice, in the form or to the effect stated in the schedule marked (B) to this act annexed, adapting the

custody: Provided also, that in case such party so giving security shall not appear in pursuance of his undertaking, it shall be lawful for the court forthwith to issue a writ of *distringas* and *capias*, or *fieri facias* and *capias*, against the surety or sureties of the person so bound as aforesaid. 3 G. 4. c. 46.

§ 6. Enacts, that the court of general or quarter sessions before whom any person so committed to gaol or bound to appear shall be brought, is hereby authorised and required to enquire into the circumstances of the case, and shall, at its discretion, be empowered to order the discharge of the whole of the forfeited recognisance, or sum of money paid or to be paid in lieu or satisfaction thereof, or any part thereof; and such order shall be made in the form or to the effect of the schedule marked (C) to this act annexed, and shall be signed by the clerk of the peace, which said order shall be a discharge to such sheriff, bailiff, or officer on the passing of his accounts at the exchequer, or before any auditor or other proper officer duly authorised to pass the same; and in all cases where the party shall have been lodged in the common gaol by such sheriff, bailiff, or other officer, the justices of the peace so assembled are hereby empowered either to remand such party to the custody of the sheriff, bailiff, or other officer, or upon the release of such party from the whole of such forfeited recognisance, to order such party to be discharged from custody, and such order shall be a full and sufficient discharge to the said sheriff, bailiff, or officer on the passing of his accounts at the exchequer, or before any auditor or other proper officer duly authorised to pass the same; and it shall and may be lawful to and for the said court of general or quarter sessions to award such costs, charges, and expenses to be paid by either party to the other, as to the said court shall seem just and reasonable. Justices at quarter sessions to hear and determine such appeals.

§ 9. None of the proceedings under this act shall be liable to any stamp duty. Proceedings not liable to stamp duty.

§ 10. Enacts, that the clerk of the peace and other officers shall be entitled to their usual and legal fees on the discharge of any forfeited recognisance, and the said clerk of the peace to an allowance of 6*d.* for every one hundred words, for all copies of the roll sent to the said lords commissioners of the treasury: and in case any such sheriff, bailiff, officer, or clerk of the peace shall refuse or neglect to do and perform any duty, act, or thing imposed or required upon or from such sheriff or clerk, bailiff or officer, in manner by this act directed, then and in every such case, such sheriff, bailiff or officer, or clerk so refusing or neglecting, shall forfeit the sum of 50*l.*, to be recovered by any person or persons who will sue for the same, together with full costs of suit, by action of debt or on the case, in any of H. M.'s courts of record at *Westminster*, wherein no essoign, protection, wager of law, or any more than one imparlance shall be allowed. Allowance to sheriff and clerk of the peace on sums levied. Penalty on sheriff, &c. for neglect, 50*l.*

§ 11. Nothing in this act contained shall extend or be construed to extend so as to prevent or interfere with the appropriation of any such fines, issues, amerciaments, forfeited recognisances, sum or sums of money, when so paid or accounted for into the said court of exchequer by any such sheriff, bailiff, or officer, but the same shall and may be applied, disposed of, and appropriated in such and the like manner as such fines, issues, amerciaments, Not to alter the usual mode of appropriating fines.

3 G. 4. c. 46.

forfeited recognisances, sum or sums of money paid in lieu or satisfaction of them, or any of them, paid into the exchequer, were applied, disposed of, and appropriated before the passing of this act.

Compensations to officers.

§ 12. It shall be lawful for the lords commissioners of H. M.'s treasury to make such compensation as they may think fit, for the loss of any legal fees occasioned to the officers thereof, or to the officers of the court of the duchy of *Lancaster*, by this act.

Act not to prejudice the rights, &c. of his majesty in the duchy of Lancaster.

§ 13. Nothing in this act contained shall extend or be in any ways prejudicial to the rights, liberties, or privileges of the king, in right of his duchy or county palatine of *Lancaster*.

Clerks of the peace, &c. to deliver unto the court of exchequer yearly a certificate of all fines, &c. paid, that the sheriffs may be charged in their accounts, and that parties entitled to fines, &c. may claim the same.

§ 14. Provides and enacts, that all and every the clerk and clerks of the peace, and all town-clerks, within that part of the U. K. called *England*, do and shall, on or before the second *Monday* after the morrow of *All Souls* yearly in every year, make and deliver into the court of exchequer a true and perfect duplicate on certificate of all such fines, issues, amerciaments, forfeited recognisances, and sum and sums of money, and other forfeitures whatsoever paid in lieu or satisfaction of them or any of them, as shall be contained in the several rolls or copies which shall be so sent out to the sheriff for the purpose of levying as aforesaid, and which shall have been set, lost, imposed, or forfeited in any of the said sessions of the peace which shall be held before *Michaelmas* in each year, to the intent that the sheriffs, on their appeals in the said court of exchequer, may be charged in their accounts with the monies levied and received by him or them respectively upon such writs or otherwise, and that all parties entitled to any such fines, recognisances, or other forfeitures, or any portion or portions thereof, may be at liberty to claim the same before the foreign apposer of the said court of exchequer, according to the ancient course and practice of the said court.

Saving rights of bodies corpo-

§ 15. Nothing in this act contained shall in any sort extend

that you enter the same, and of all the goods and chattels, lands and tenements of all and singular the persons in the several extracts of this writ annexed, you cause to be levied all and singular the debts and sums of money upon them in the same extracts severally imposed and charged, so that the money may be ready for payment at the next general or quarter sessions of the peace, to be paid over in such manner as any two or more of the lords commissioners of his majesty's treasury may direct; and if any of the said several debts cannot be levied by reason of no goods or chattels being to be found belonging to the parties, then in all cases that you take the bodies of the parties refusing to pay the aforesaid debts, and lodge them in the gaol [*of the county, city,* &c.], *there to await the decision of the justices assembled at the next general or quarter sessions, unless the parties shall have given sufficient security for their appearance at such sessions, for which you will be held answerable, and have you there then this writ. Witness* ———, *keeper of the rolls of the county, at* ———, *in the county of* ———, *the* ——— *day of* ———, *in the* ——— *year of our reign.*

———,
Clerk of the Peace.

Schedule (B). B.

County of ———, to wit. } *TAKE notice, that you* ———, *of* ———, *are bound in the sum of* ——— *pounds, and your sureties* ———, *in the sums of* ——— *pounds each, to appear at the quarter or general sessions of the peace for the county of* ———, *to be holden at* ———, *on the* ——— *day of* ——— *next, and unless you personally make your appearance accordingly, the recognisances entered into by yourself and securities will be forthwith levied on you and your bail. Dated this* ——— *day of* ———, *one thousand eight hundred and twenty* ———.

———,
Justice of the Peace.

Schedule (C). C.

To the sheriff, bailiff, or officer [*as the case may be*] of the county, [city, borough, *or* place, *as the case may be*] of ———.

WHEREAS ——— *hath appeared before the justices assembled at the general or quarter sessions* [as the case may be], *held at the* ——— *on the* ——— *day of* ———, *has forfeited the sum of* ———, [here describe the nature of the fine or forfeiture,] ——— *and having made it appear to the satisfaction of the justices so assembled, that he should be relieved from the payment of the said sum of* ———, [or if the penalty is mitigated, state from what part thereof,] *You are therefore hereby required to discharge the said sum of* ———, *from the estreat roll delivered to you after the quarter sessions held at* ———, *for which discharge this warrant shall be your authority, and shall exonerate you from the said charge on the final passing of your accounts at the exchequer, or before any other officer duly authorised to pass such account.*

By order of the Court.

4 G. 4. c. 37. Justices in sessions may insert in following rolls all such fines, &c. as have not been levied or accounted for by the sheriff, &c. or that have not been discharged.

By stat. 4 *G.* 4. *c.* 37. § 1. After reciting stat. 3 *G.* 4. *c.* 46. it is enacted, that it shall be lawful for the justices assembled at any general or quarter sessions of the peace, and they are hereby authorised and required, at the following or any subsequent general or quarter sessions held after the return of the writ and roll issued from any preceding general or quarter sessions, at the opening of the court, to insert or cause to be inserted in any following roll, all such fines, issues, amerciaments, forfeited recognisances, sum or sums of money to be paid in lieu or satisfaction of them or any of them, which have not been duly levied or recovered or properly accounted for by the sheriff, bailiff, or other officer, or have not been discharged on appeal before the general or quarter sessions, or by sign-manual, warrant or authority of any three or more of the commissioners of H. M.'s treasury of the U. K. of *G. B.* and *Ireland*, and so to continue such process from sessions to sessions, till it shall be duly ascertained, to the satisfaction of the said commissioners of H. M.'s treasury, that the party in default has not any goods or chattels, lands, or tenements, in the county, division, riding, city, town, or place, on which a levy can be made, nor in any other county, division, riding, city, town, or place in *G. B.*, and that he is not to be found, or that his body cannot be lodged in any of H. M.'s goals: Provided always, that the said sheriff, bailiff, or other officer to whom the writ of *distringas* and *capias* or *fieri facias*, or other writ deemed necessary by the justices at any such general or quarter sessions to meet the exigency of the case, shall be sent by order of the said court, shall keep and detain in his possession the writ or writs so directed to him, and the roll or rolls attached to such writ or writs, delivering to the said court of general or quarter sessions a copy of such roll or rolls, on the first day of the sitting of the said court, and also a copy of any former roll or rolls, where the fines, issues, amerciaments, forfeited recognisances, sum or sums of money paid or to be paid in lieu or satisfaction of them, or any of them, shall not have been delivered; and such original writ and roll, or writs and rolls, shall continue in force and effect, and shall be sufficient authority, without any further writ or roll; and such sheriff, bailiff, or other officer is hereby authorised and required, on quitting his office, to deliver over to his successor all rolls and writs in his possession, particularising any fines, issues, amerciaments, forfeited recognisances, sum or sums of money paid or to be paid in lieu or satisfaction of them, or any of them, in order that the sheriff, bailiff, or other officer coming into office may use every means in his power for recovering the sums so unpaid, and not charged to his predecessor on the passing of his accounts at the exchequer, or before any auditor or auditors, or other person duly authorised to pass the same, the officer or officers entrusted with the execution of the process in any county, division, riding, city, town, or place, being first duly and diligently examined on oath by the court, at the delivery of the roll, on the first day of each general or quarter sessions, and in case such examination should not then take place, then on the subsequent day; and every such examination shall be duly recorded by the clerk of the peace or town-clerk or other proper officer, in order that such sheriff, bailiff, or other officer may be chargeable with all sums not satisfactorily accounted for on the final passing of his accounts.

Sheriff to detain the original writs in his possession, which shall continue in force, and be authority to act upon.

Sheriff on quitting office to deliver over to his successor all rolls and writs, particularising fines, &c. that means may be used for recovery.

2. Sections 7. and 8. of stat. 3 *G.* 4. *c.* 46. are repealed. 4 G. 4. c. 37.

In all cases where the party incurring or subject to any sue, amerciament, forfeited recognisance, sum or sums of to be paid in lieu or satisfaction of them or any of them, eside or shall have fled or removed from or out of the tion of the sheriff, bailiff, or other officer, in which any ie, issue, amerciament, forfeited recognisance, sum or sums ey to be paid in lieu or satisfaction of them, or any of them, ive been incurred, imposed, or forfeited, or become due, it e lawful for such sheriff, bailiff, or other officer, and he is authorised and required to issue his warrant, together with of the writ, directed to the sheriff, bailiff, or other officer for the county, riding, city, borough, or place in which erson shall then reside or be, or in which any goods or s or other property shall be found, requiring such sheriff, or other officer to execute such writ, and every such last- ied sheriff, bailiff, or other officer, is hereby authorised and d to act in all respects under such warrant, in the same as if the original writ had been delivered to him by order court of the general or quarter sessions of the county, city, borough, or place for which such sheriff, bailiff, or fficer shall act; and the said sheriff, bailiff, or other officer by required, within thirty days after the receipt of such t, to return to the sheriff, bailiff, or other officer, from ie shall have received the same, what he shall have done in cution of such process, and whether the party shall have ood and sufficient security to appeal at the ensuing general ter sessions to be held for the county, riding, city, borough, e from which the writ issued, and in case a levy shall have ade, to pay over all monies received in pursuance of the to the sheriff, bailiff, or other officer from whom he shall ceived the same.

Where party subject to fines, &c. resides in another county, or has removed, the sheriff may issue his warrant to the sheriff acting for the place where the defaulter resides, or where his goods are found, requiring him to execute the writ.

Every sheriff, bailiff, or other officer acting for any county, , riding, city, borough, or place, shall and he is hereby l to make up or cause to be made up annually, and im- ly after the expiration of the year for which he shall act, the usual period for making up his account, in case he t under any grant, appointment, or other authority for a period than one year, an account in writing, containing the nd residences of all persons incurring fines, issues, amer- s, forfeited recognisances, sum or sums of money paid or id in lieu or satisfaction of them, or any of them, which been authorised or required to levy by virtue of any writ issued to him, or to any predecessor in office; and in case , issue, amerciament, forfeited recognisance, sum or sums y paid or to be paid in lieu or satisfaction of them or any , shall not have been levied or paid, the causes of non- t shall be fully and particularly stated; and such account eriff, bailiff, or other officer is hereby required to transmit, hirty days from the expiration of the year for which such ought to be made up, to the commissioners of H. M.'s , or at or within such other period as such sheriff, bailiff, officer shall be required by the said commissioners of treasury, or any three or more of them, in order that such may be duly examined, checked, and inspected, under

Sheriff, &c. to render an account yearly of all persons incurring fines, &c.

Causes of non-payment to be stated.

Account to be transmitted to the treasury.

1 G. 2. c. 27.

the direction of the said commissioners of H. M.'s treasury, or any three or more of them; and when so examined and approved, such account shall be transmitted to the proper officer in the court of exchequer, or to the auditor or other officer duly authorised to pass such account.

Clerks of the peace, &c. to send to the treasury, within 20 days from the opening of the quarter sessions, copy of the rolls delivered by the sheriff.

§ 5. Every clerk of the peace, and town-clerk, or other proper officer, is hereby required, within twenty days from the opening of the court of general or quarter sessions, to send to the commissioners of H. M.'s treasury a copy or an extract of the roll or rolls delivered by the sheriff, bailiff, or other officer, on the first day of the opening of such court of general or quarter sessions, in such form as shall be required by the said commissioners of H. M.'s treasury, also the causes of discharge in case any person shall have been relieved on appeal to the said court of general or quarter sessions, and the answer given by any sheriff, bailiff, or other officer to such court, where any fine, issue, amerciament, forfeited recognisance, sum or sums of money paid or to be paid in lieu or satisfaction of them or any of them, has not been received by such sheriff, bailiff, or other officer duly authorised to receive the same.

Fire. See Burning and Black Act, vol. i.

Fire-arms (*Manufacturing*).

[53 G. 3. c. 115.—55 G. 3. c. 59.]

53 G. 3. c. 115. By stat. 53 G. 3. c. 115. After reciting, that whereas serious



§ 2. Every person who shall use, or cause or procure to be used any barrel in the making, manufacturing, or finishing of any gun, fowling-piece, blunderbuss, pistol, or any other description of fire-arms as aforesaid, or who shall sell or cause to be sold any barrel for the making of any gun, fowling-piece, blunderbuss, pistol, or other description of fire-arms, which shall not first have been duly proved, and marked as proved at the gun-makers' company's proof-house in *London*, or at the proof-house to be established under the provisions of this act, or some proof-house belonging to H. M., or other public proof-house, established as such by law, or by H. M., shall forfeit and pay for every such offence any sum not exceeding 20*l*., to be recovered as hereinafter mentioned. *58 G.3. c.115.* Penalty on persons using or selling barrels not duly proved.

§ 3. Nothing in this act contained shall extend to *Scotland* or *Ireland*, to arms for H. M.'s forces, or the *East India* Company.

§ 4, 5, 6. Relate to the establishing a gun-barrel proof-house and corporation in the town of *Birmingham*.

§ 7. All barrels brought to the said proof-house shall be proved with powder of equal quality as that used by the board of ordnance, and according to a certain scale specified; when so proved, such barrels to be marked as described.

§ 8. Relates to the appointment of a prover at *Birmingham*.

§ 10, 11. Relate to the appointment of a treasurer, and the application of sums received for proving.

But by stat. *55 G.3. c.59.* It is enacted, § 1. "that every person who shall use, or begin to use, or cause or procure to be used, or to be begun to be used, either by ribbing, break-off fitting, rough-stocking, or other process, in any progressive state of manufacture in the making, manufacturing, or finishing of any gun, fowling-piece, blunderbuss, pistol, or other description of fire-arms, usually called small-arms, any barrel which shall not have been duly proved and marked as proved at the proof-house of the company of gun-makers of the city of *London*, or at the proof-house established under the provisions of the said recited act, (so long as such respective proof-houses shall be maintained for proving and marking the barrels of fire-arms), or some proof-house belonging to H. M., or other proof-house to be established as a public proof-house, (and which public proof-house H. M. is hereby authorised and empowered to establish under such regulations, as to the care and management thereof, as H. M. shall think fit,) shall respectively forfeit for each and every barrel so used or begun to be used, or caused or procured to be used, or to be begun to be used, any sum not exceeding 20*l*., to be recovered and applied as hereinafter mentioned." *55 G.3. c.59.* Penalty for using in any of the progressive stages of manufacture of fire-arms, barrels not duly proved.

§ 2. "Every barrel for the making of, or proper or applicable for the making of any gun, fowling-piece, blunderbuss, pistol, or any other description of fire-arms, usually called small-arms, shall be sent immediately from the manufacturers themselves to the proof-house of the company of gun-makers of the city of *London*, or to the proof-house established under the provisions of the said recited act, (so long as such respective proof-houses shall be maintained for the proving and marking the barrels of fire-arms,) or some other proof-house established by law, before the same shall be delivered, or caused or procured, or permitted to be delivered or sent for sale, or under pretence of sale, or be removed, consigned or *transmitted, or caused* or procured to be removed, Barrels of fire-arms to be sent direct from manufacturers to proof-houses.

55 G.3. c.59.

Penalty on delivering except through a proof-house.

consigned, or transmitted for sale, or under pretence of sale, to any person whatsoever; and from and after the passing of this act, every person who shall deliver or send, or cause or procure to be delivered or sent for sale, or under pretence of sale, or who shall remove, consign or transmit, or cause or procure to be removed, consigned, or transmitted for sale, or under pretence of sale, any barrel for the making of, or proper or applicable for the making of any gun, fowling-piece, blunderbuss, pistol, or any other description of fire-arms usually called small-arms, from the place where the same shall have been manufactured, which shall not have been first duly sent to the proof-house of the said company of gunmakers of the city of *London*, or the said proof-house at *Birmingham*, or some other proof-house established by law, to be proved and marked under the provisions of the said recited act, shall forfeit for each and every barrel so sent, or caused or procured to be sent for sale, or under pretence of sale, or removed, consigned, or transmitted, or caused or procured to be removed, consigned, or transmitted for sale, or under pretence of sale, any sum not exceeding 20*l.*, to be recovered and applied as hereinafter mentioned."

Penalty on persons receiving barrels of fire-arms for the purpose of making guns, &c. which shall not have passed the proof-house and been proved.

§ 3. "Every person who shall take or receive, or cause or procure to be taken or received, or permit or suffer to be received on his behalf any barrel, for the purpose of making or manufacturing, or proper or applicable for the making or manufacturing of any gun, fowling-piece, blunderbuss, pistol, or other description of fire-arms usually called small-arms, directly or indirectly from the manufacturer thereof, or from any other person on his behalf, except from or through some one or other of such proof-houses as aforesaid, or unless the same shall have been first duly proved and marked as proved at the proof-house of the company of gunmakers of the city of *London*, or the proof-house established under the provisions of the said recited act (so long as such respective proof-houses shall be maintained for proving and marking the barrels of fire-arms) or some other proof-house belonging to H. M.

[redacted]

gun-makers of the city of *London* shall receive all barrels sent, consigned, or transmitted to the said proof-house for proof, and prove the same, and cause all such barrels, after the same have been proved, and (if found to be proof) marked, to be delivered to the persons for whom such barrels are directed, upon payment of all such charges as shall have been incurred in respect of the carriage and delivery of such barrels at the proof-house, and of the said company's charges for proving the same, and of the keeping of the same for proof, and delivery thereof to the person for whom the same are intended or shall be directed to be delivered to after proof; and in case any barrel so sent to the said proof-house to be proved shall not be received and proved thereat according to law, or shall be delivered or parted with, or permitted to be delivered or parted with, or to be taken away, which shall not have been so proved, and (if found to be proof) marked with the marks and according to the regulations of the said company of gun-makers of the city of *London* for the time being then and in every such case the person so having the charge, care, and management of such proof-house for the time being, shall forfeit for each and every barrel which shall not be received and proved in manner before mentioned, and for each and every barrel which shall be so delivered or parted with, or permitted to be delivered or parted with or taken away, which shall not have been so proved, and (if found to be proof) marked as proved as aforesaid, the sum of ten shillings, to be recovered and applied as hereinafter mentioned." *55 G.8. c.59.*

§ 5. "Nothing in this act contained shall extend to *Scotland* or *Ireland* (except as to the forging marks, as in this act after mentioned), or to arms for the use of H. M.'s forces, or for the *East India* company, or to any barrels in the forged ground, finished or in any other state of manufacture, which shall be made or consist of stub or twisted stub, iron or other barrels usually termed best barrels; (which said last-mentioned barrels may be sent, brought, or received for the purposes aforesaid, in any number not exceeding twenty, without being subject to any penalty, except that such barrels shall be liable to the penalty for using barrels not duly proved and marked;) and nothing in this act contained is to exempt such last-mentioned barrels from being proved and marked as required by the said recited act and this act." Not to extend to Scotland or Ireland, or to arms made for H. M. or the East India company, or certain barrels specified.

§ 6. "Every person who shall, in any part of the U. K., forge or counterfeit, or cause or procure to be forged or counterfeited, or assist or join in forging or counterfeiting, any mark or stamp used or which may be used at any proof-house for proving and marking barrels in pursuance of the said recited act, or shall wilfully or knowingly sell or offer for sale, or use in the making or manufacturing of any gun, fowling-piece, blunderbuss, pistol, or other description of fire-arms as aforesaid, any barrel finished, welded, or forged, or in any other progressive state of manufacture, whereon shall be any mark or stamp which shall be forged or counterfeited in imitation of or to resemble any mark or stamp so used or to be used at any such proof-house, shall respectively forfeit and pay for each and every such barrel whereon any such forged or counterfeit mark shall be, any sum not exceeding 20*l.*, to be recovered and applied as hereinafter mentioned." Penalty for forging proof-marks, or selling, &c. barrels with forged marks.

55 G.3. c.59.

Penalty for putting proof-marks on barrels not proved.

§ 7. "If any proof-master or assistant proof-master appointed or to be appointed under the said recited act, or any other person shall, in any part of the U. K., put, place, or strike, or cause or procure to be put, placed, or struck, or shall willingly act or assist in the putting, placing, or striking any mark or stamp used or which may be used at any proof-house for proving and marking barrels in pursuance of the said recited act or this act, upon any barrel finished, welded, or forged, or in any other progressive state of manufacture for the making of, or proper or applicable for the making of any gun, fowling-piece, blunderbuss, pistol, or other description of fire-arms usually called small-arms, which shall not have been duly proved at the proof-house established and maintained under the provisions of the said recited act (so long as such proof-house shall be maintained for proving and marking the barrels of fire-arms), every person so offending shall forfeit for each and every barrel on which he shall put, place, or strike, or cause or procure to be put, placed, or struck, or shall willingly act or assist in the putting, placing, or striking any such mark or stamp as aforesaid, any sum not exceeding 20*l.*, to be recovered and applied as hereinafter mentioned."

§ 8. Repeals the regulation in stat. 53 *G.* 3. *c.* 115. respecting the price of proving barrels.

Fixing the prices for proving barrels.

And by § 9. it shall be lawful for the said company to fix and regulate from time to time the sums to be paid for such proofs, so as that no higher sum shall in any case be demanded, taken, or received for any barrel which shall be proved at such proof-house, and marked as proved under the said recited act or this act, than is thereinafter set forth.

Offences and penalties, how to be heard, levied, &c.

§ 10. Any offence against this act may be heard and determined in a summary way before any two of H. M.'s justices of the peace for the county, riding, division, city, town, liberty, or place where any such offence or offences shall be committed; and the conviction may be had upon the oath of one witness; and the amount

hands, commit the offender to the common gaol or house of correction within their jurisdiction, there to remain without bail or mainprize for any time not exceeding six calendar months. 55 G.3. c.59.

§ 11. The said companies of gun-makers, their officers, servants, or agents, shall not be liable to any prosecution or information by virtue of this or the said recited act, unless such prosecution shall be commenced or information given within six calendar months after the offence committed. Limitation of prosecutions.

§ 12. Convictions to be drawn up on parchment or paper, in the form or to the effect following; that is to say, Prescribing form of conviction.

——— to wit. } *BE it remembered, that on the* ——— *day of* ———, *in the year of our Lord* ———, ——— *of* ———, *in the county of* ———, *labourer, is convicted before us* [naming the justices] ——— *of his majesty's justices of the peace for the county of* ——— [or, *riding, city, liberty, division, town, or place,*] *for that the said* ——— [here state the offence] *contrary to the statute made in the fifty-third year of the reign of King* George *the third, intituled* An act to ensure the proper and careful manufacturing of fire-arms in *England*, and for making provision for proving the barrels of such fire-arms, *and contrary to the provisions of an act passed in the fifty-fifth year of the same reign, intituled* An act [here set forth the title of this act] (*a*): *And we the said justices do hereby adjudge and determine the said* ——— *for the said offence to forfeit and pay the sum of* ——— *of lawful money of* Great Britain; *and do order one* ——— *thereof to be forthwith paid by him the said* ——— *to* ——— [the informer], *and the other* ——— *thereof to the overseers of the poor of the parish of* [where the offence was committed]; *and we the said justices do also award and direct the said* ——— *forthwith to pay to* ——— *the sum of* ——— *for costs. Given under our hands the day and year above written.*

And every such conviction shall be transmitted to the next general sessions or general quarter sessions of the peace to be holden for the county, &c. wherein such conviction was had, to be filed and kept amongst the records. Allowing an appeal from convictions of justices.

§ 13. If any person convicted of any offence punishable by this act shall think himself aggrieved by the judgment of the justices, such person shall be at liberty to appeal from every such conviction to the next court of general sessions, or general quarter sessions, of the peace which shall be held for the county, &c. wherein such offence was committed; and the justices in or at the said next court of general sessions or general quarter sessions are hereby authorised and required to hear and determine the matter of the said appeal, and to award such costs as to them shall appear just and reasonable to be paid to either party; which decision shall be final; and if upon hearing the said appeal, the judgment of the justices before whom the appellant shall have been convicted shall be confirmed, such appellant shall forthwith pay the forfeitures or penalty mentioned in such conviction, and the costs awarded

(*a*) "An act for amending an act of his present majesty, to insure the proper and careful manufacturing of fire-arms in *England*, and for making provision for proving the barrels of such fire-arms."

55 G.3. c.59.

to be paid by such appellant; and in default of payment thereof, such appellant shall immediately be committed by the said court to the common gaol or house of correction of the county, riding, division, city, town, liberty, or place where any such offence may have been committed, there to remain for any time not exceeding six calendar months, unless such penalty and costs shall be sooner paid.

Allowing an appeal from acts of trustees, &c.

§ 14. If any person shall feel himself aggrieved by any of the acts, orders, or proceedings of the said trustees, guardians, and wardens, or either of them, in pursuance of this act, such person may appeal to the justices of the peace at the next general quarter sessions of the peace to be holden for the said county of *Warwick*, such appellant (if there be sufficient time after the cause of such complaint shall have arisen) first giving eight days' notice at least, in writing, of his intention of bringing such appeal, and of the matter thereof, to the clerk or treasurer of the said trustees, and within four days after such notice (if required) entering into recognisance before some justice of the peace for the said county, with two sufficient sureties conditioned to try such appeal, and abide the order thereon, and to pay such costs as shall be awarded by the justices at such quarter sessions; and for want of sufficient time for giving such notice previous to the first quarter sessions after the cause of such complaint shall have happened, then such appeal, after such notice and under such recognisance, may be made at the second general quarter sessions of the peace to be holden for the said county; and the justices at such first or second sessions shall hear and finally determine the cause and matter of such appeal in a summary way, and award such costs to the parties appealing or appealed against as they the said justices shall think proper; and the determination of such quarter sessions shall be final and conclusive; and the said justices at such sessions may also by their order or warrant, levy such costs so awarded, by distress and sale of the goods and chattels of the person or persons who shall neglect to pay the same, and for want of sufficient dis-

shall be brought to the proof-house at *Birmingham* to be proved, according to the provisions of the said recited act. 55 G.3. c.59.

As to seizure of fire-arms, see Vol. V. tit. Riots. Seising fire-arms.

Fireworks.

BY stat. 9 & 10 *W.*3. *c.*7. § 1. It shall not be lawful for any person (of what age, sex, degree, or quality soever,) to make or cause to be made, or to sell or expose to sale any squibs, rockets, serpents, or other fireworks, or any cases, moulds, or other implements for making the same; or to permit the same to be cast, thrown, or fired from out of or in his house, lodging, or habitation, or other place thereto belonging, into any public street, highway, road, or passage; or to throw, cast, or fire, or be aiding in throwing, casting, or firing the same in or into any public street, house, shop, river, highway, road, or passage; and every such offence shall be adjudged a common nuisance. 9&10W.3. c.7. Fireworks a nuisance.

§ 2. If any person shall make or cause to be made, or give, sell, or offer to sale any squibs, rockets, serpents, or other fireworks or any cases, moulds, or other implements for making the same, he shall, on conviction before one justice, or chief magistrate, by confession or oath of two witnesses, forfeit 5*l.*, half to the poor, and half to the prosecutor, to be levied by distress, by warrant of such justice or chief magistrate. Making and selling rockets, &c.

§ 2. And if any person shall permit any the same to be cast, thrown, or fired from, out of, or in his house, shop, dwelling, lodging, habitation, or other place thereto belonging, into any public street, highway, road, or passage, or any other house or place, he shall forfeit 20*s.* in like manner. Suffering rockets to be fired.

§ 3. If any person shall throw, cast, or fire, or be aiding in throwing, casting, or firing any the same into any public street, house, shop, river, highway, road, or passage, he shall forfeit 20*s.* in like manner; and if he shall not immediately on conviction pay to the justices the said forfeiture for the uses aforesaid, the latter shall commit him to the house of correction, to be kept to hard labour for any time not exceeding one month, unless he shall sooner pay the forfeiture. Firing rockets.

Where a squib was wantonly thrown among the stands at a fair, and being removed from off that on which it alighted, it occasioned the loss of the eye of a bystander, it was holden by *De Grey* C. J., and *Nares* and *Gould* Js., against *Blackstone* J., that all that was done subsequent to the original throwing was a continuation of the first force, and first act, which continued till the squib was spent by bursting; and that trespass, not an action on the case, was the proper remedy. *Scott* v. *Shepherd*, 2 *Black. Rep.* 892.

In a like case at *N. P.* it was held by Lord *Ellenborough* C. J., that a schoolmaster who permits an infant pupil under his care to make use of fireworks, is responsible in an action for the mischief which ensues. *King* v. *Ford*, 1 *Stark. N. P. C.* 421.

By stat. 3 *G.*4. *c.* 126. § 121. A penalty of 40*s.* is imposed for making or assisting in making *bonfires*, or wantonly letting off any 3 G.4. c.126.

3 G.4. c.26. squib, rocket, serpent, or other firework whatsoever, within 80 feet of the centre of any turnpike-road. See *post*, tit. Highways, (*Turnpike*).

Information on stat. 9 & 10 *W.* 3. *c.* 7. § 2. for selling fireworks.

County of ——— to wit. } *BE it remembered, that on the —— day of ——, in the year of our Lord ——, at ——, in the said county of ———, A.I. of ———, in the said county, gentleman, cometh before me, J. P. esquire, one of his majesty's justices of the peace in and for the said county, and giveth me, the said justice, to understand and be informed, that* A.O. *of the town and parish of ———, in the said county, toyman, at his shop in the said town and parish, on the ——— day of this instant month of ———, unlawfully, and against the form of the statute, did sell to one* R.F. *certain squibs, serpents, rockets, and other fireworks, whereby the said* A.O., *by virtue of the said statute in that case made and provided, hath for his said offence forfeited the sum of five pounds; wherefore the said* A.I. *prayeth the judgment of me, the said justice, in the premises, and that he may have one moiety of the said forfeiture of five pounds.*

Exhibited, &c.

For casting and throwing squibs and other fireworks.

——— *That* A.O. *late of ——— in the said county, yeoman, on the ——— day of ——— now last past, at the town and parish of ——— in the said county, in the public street and highway there unlawfully did throw, cast, and fire certain fireworks, against the form of the statute in such case made and provided, whereby and by force of the said statute the said* A.O. *for his said offence hath forfeited the sum of twenty shillings. Wherefore, &c.*



(5) An act for the better preservation of fish, and regulating the fisheries in the rivers *Severn* and *Verniew*. 18 G.3. c.33.

What follows seems best reducible under these heads: —

I. *Of fishing, &c. in ponds and other private fisheries.*
[7 & 8 G. 4. c. 27. — c. 29. — c. 30.]

II. *Rules concerning the Assize and preserving the breed of fish.*
[13 Ed. 1. st. 1. c. 47. — 13 R. 2. st. 1. c. 19. — 17 R. 2. c. 9. — 2 H. 6. c. 15. — 1 Eliz. c. 17. — 1 G. st. 2. c. 18. — 33 G. 2. c. 27. — 43 G. 3. c. lxi. — 45 G. 3. c. xxxiii. — 58 G. 3. c. 43.]

III. *Of the herring and other fisheries.*
[28 G. 2. c. 14. — 26 G. 3. c. 81. — 27 G. 3. c. 10. — 48 G. 3. c. 110. — 50 G. 3. c. 108. — 55 G. 3. c. 94. — 1 & 2 G. 4. c. 79. — 5 G. 4. c. 64. — 7 G. 4. c. 34. — c. 47.]

IV. *Of the oyster-fisheries.*
[7 & 8 G. 4. c. 27. — c. 29.]

V. *Rules concerning fishing in or near the sea.*
[3 J. 1. c. 12. — 1 G. 1. st. 2. c. 18. — 9 G. 1. c. 33. — 33 G. 2. c. 27.]

VI. *Importing fish.*
[18 C. 2. c. 2. — 1 G. 1. st. 2. c. 18. — 9 G. 2. c. 33.]

I. Of fishing, &c. in ponds and other private fisheries.

Any man may erect a fish-pond without licence; because it is a matter of profit, and for the increase of victuals. 2 *Inst.* 199. Erecting a fish-pond.

By stat. 7 & 8 *G.* 4. *c.* 27. The several former stats. relative to the offences of fishing in and damaging ponds and private fisheries, are repealed. 7 & 8 G.4. c.27. Former statutes repealed.

By stat. 7 & 8 *G.* 4. *c.* 29. § 34. If any person shall unlawfully and wilfully take or destroy any fish in any water which shall run through or be in any land adjoining or belonging to the dwelling-house of any person being the owner of such water, or having a right of fishery therein, every such offender shall be guilty of a misdemeanor, and, being convicted thereof, shall be punished accordingly; and if any person shall unlawfully and wilfully take or destroy, or attempt to take or destroy, any fish in any water not being such as aforesaid, but which shall be private property, or in which there shall be any private right of fishery, every such offender, being convicted thereof before a justice of the peace, shall forfeit and pay, over and above the value of the fish taken or destroyed (if any), such sum of money, not exceeding 5*l.*, as to the justice shall seem meet: Provided that nothing herein-before contained shall extend to any person angling in the day-time; but if any person shall by angling in the day-time unlawfully and wilfully take or destroy, or attempt to take or destroy, any fish in any such water as first mentioned, he shall, on conviction before a justice of the peace, forfeit and pay any sum not exceeding 5*l.*; 7 & 8 G.4. c.29. Taking fish in any water situate in land belonging to a dwelling-house; in any private fishery elsewhere. See post, § 66 & 67. Provision respecting anglers. See post, § 66. & 67.

& 8 G. 4. c. 29.

and if in any such water as last mentioned, he shall, on the like conviction, forfeit and pay any sum not exceeding 2*l.*, as to the justice shall seem meet; and if the boundary of any parish, township, or vill shall happen to be in or by the side of any such water as is herein-before mentioned, it shall be sufficient to prove that the offence was committed either in the parish, township, or vill named in the indictment or information, or in any parish, township, or vill adjoining thereto.

The tackle of fishers may be seized.

§ 25. If any person shall at any time be found fishing against the provisions of this act, it shall be lawful for the owner of the ground, water, or fishery where such offender shall be so found, his servants, or any person authorised by him, to demand from such offender any rods, lines, hooks, nets, or other implements for taking or destroying fish, which shall then be in his possession, and in case such offender shall not immediately deliver up the same, to seize and take the same from him for the use of such owner: Provided that any person angling in the day-time against the provisions of this act, from whom any implements used by anglers shall be taken, or by whom the same shall be delivered up as aforesaid, shall by the taking or delivering thereof be exempted from the payment of any damages or penalty for such angling.

Angler, on seizure of his tackle, exempt from penalty.

A person in the act of committing any offence may be apprehended without a warrant.

§ 63. For the more effectual apprehension and discovery of all offenders punishable under this act, it is enacted, that any person found committing any offence punishable, either upon indictment or upon summary conviction, by virtue of this act, except only the offence of angling in the day-time, may be immediately apprehended without a warrant by any peace-officer, or by the owner of the property on or with respect to which the offence shall be committed, or by his servant or any person authorised by him, and forthwith taken before some neighbouring justice of the peace, to be dealt with according to law; and if any credible witness shall prove, upon oath before a justice of the peace, a reasonable cause to suspect that any person has in his possession or on his premises

A justice, upon good grounds of suspicion

ness, before any justice of the peace with any such offence, the justice may summon the person charged to appear at a time and place to be named in such summons, and if he shall not appear accordingly, then (upon proof of the due service of the summons upon such person, by delivering the same to him personally, or by leaving the same at his usual place of abode,) the justice may either proceed to hear and determine the case *ex parte*, or issue his warrant for apprehending such person, and bringing him before himself or some other justice of the peace, or the justice before whom the charge shall be made may (if he shall so think fit), without any previous summons (unless where otherwise specially directed), issue such warrant, and the justice before whom the person charged shall appear or be brought shall proceed to hear and determine the case.

Persons punishable on summary conviction.

§ 66. And with regard to the application of all forfeitures and penalties upon summary convictions under this act, it is enacted, that every sum of money, which shall be forfeited for the value of any property stolen or taken, or for the amount of any injury done (such value or amount to be assessed in each case by the convicting justice), shall be paid to the party aggrieved, if known, except where such party shall have been examined in proof of the offence, and in that case, or where the party aggrieved is unknown, such sum shall be applied in the same manner as a penalty; and every sum which shall be imposed as a penalty by any justice of the peace, whether in addition to such value or amount, or otherwise, shall be paid to some one of the overseers of the poor, or to some other officer (as the justice may direct) of the parish, township, or place in which the offence shall have been committed, to be by such overseer or officer paid over to the use of the general rate of the county, riding, or division in which such parish, township, or place shall be situate, whether the same shall or shall not contribute to such general rate: Provided that where several persons shall join in the commission of the same offence, and shall, upon conviction thereof, each be adjudged to forfeit a sum equivalent to the value of the property or to the amount of the injury, in every such case no further sum shall be paid to the party aggrieved than that which shall be forfeited by one of such offenders only; and the corresponding sum or sums forfeited by the other offender or offenders shall be applied in the same manner as any penalty imposed by a justice of the peace is herein-before directed to be applied.

Application of forfeitures and penalties on summary convictions.

Proviso.

§ 67. In every case of a summary conviction under this act, where the sum which shall be forfeited for the value of the property stolen or taken, or for the amount of the injury done, or which shall be imposed as a penalty by the justice, shall not be paid, either immediately after the conviction, or within such period as the justice shall, at the time of the conviction, appoint, it shall be lawful for the convicting justice (unless where otherwise specially directed) to commit the offender to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, according to the discretion of the justice, for any term not exceeding two calendar months, where the amount of the sum forfeited, or of the penalty imposed, or of both (as the case may be), together with the costs, shall not exceed 5*l.*; and for any *term not exceeding four* calendar months, where the

If a person summarily convicted shall not pay, &c. the justice may commit him.

Scale of imprisonment.

& 8 G.4. c.29.

amount with costs shall not exceed 10*l.*; and for any term not exceeding six calendar months in any other case; the commitment to be determinable in each of the cases aforesaid upon payment of the amount and costs.

ustice may discharge the offender in certain cases.

§ 68. Provided, that where any person shall be summarily convicted before a justice of the peace of any offence against this act, and it shall be a first conviction, it shall be lawful for the justice, if he shall so think fit, to discharge the offender from his conviction, upon his making such satisfaction to the party aggrieved for damages and costs, or either of them, as shall be ascertained by the justice.

orm of conviction.

§ 71. The justice before whom any person shall be convicted of any offence against this act may cause the conviction to be drawn up in the following form of words, or in any other form of words to the same effect, as the case shall require; *viz.*

BE it remembered, that on the ——— *day of* ———, *in the year of our Lord* ———, *at* ———, *in the county of* ———, [or *riding, division, liberty, city, &c.* as the case may be,] A. O. *is convicted before me* J. P., *one of H. M.'s justices of the peace for the said county* [or *riding, &c.*], *for that he the said* A. O. *did* [specify the offence, and the time and place when and where the same was committed, as the case may be; and on a second conviction state the first conviction]; *and I the said* J. P. *adjudge the said* A. O. *for his said offence to be imprisoned in the* ——— [or, *to be imprisoned in the* ———, *and there kept to hard labour,*] *for the space of* ———, [or, *I adjudge the said* A. O. *for his said offence to forfeit and pay* ——— [here state the penalty actually imposed, or state the penalty, and also the value of the articles stolen, or the amount of the injury done, as the case may be], *and also to pay the sum of* ——— *for costs, and in default of immediate payment of the said sums, to be imprisoned in the* ——— [or, *to be imprisoned in the* ———, *and there kept to hard labour,*] *for the space of* ——— , *unless the said sums shall be sooner paid;* [or, *and I order that the said sums shall be paid by the said* A. O. *on or be*

[redacted]

or division, wherein the cause of complaint shall have arisen; provided that such person shall give to the complainant a notice in writing of such appeal, and of the cause and matter thereof, within three days after such conviction, and seven clear days at the least before such sessions, and shall also either remain in custody until the sessions, or enter into a recognisance with two sufficient sureties before a justice of the peace, conditioned personally to appear at the said sessions and to try such appeal, and to abide the judgment of the court thereupon, and to pay such costs as shall be by the court awarded; and upon such notice being given, and such recognisance being entered into, the justice, before whom the same shall be entered into, shall liberate such person if in custody; and the court at such sessions shall hear and determine the matter of the appeal, and shall make such order therein, with or without costs to either party, as to the court shall seem meet; and in case of the dismissal of the appeal, or the affirmance of the conviction, shall order and adjudge the offender to be punished according to the conviction, and to pay such costs as shall be awarded, and shall, if necessary, issue process for enforcing such judgment. 7 & 8 G. 4. c. 29.

§ 73. No such conviction or adjudication made on appeal therefrom shall be quashed for want of form, or be removed by *certiorari* or otherwise into any of H. M.'s superior courts of record; and no warrant of commitment shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted, and there be a good and valid conviction to sustain the same. No certiorari, &c.

§ 74. Every justice of the peace, before whom any person shall be convicted of any offence against this act, shall transmit the conviction to the next court of general or quarter sessions which shall be holden for the county or place wherein the offence shall have been committed, there to be kept by the proper officer among the records of the court; and upon any indictment or information against any person for a subsequent offence, a copy of such conviction, certified by the proper officer of the court, or proved to be a true copy, shall be sufficient evidence to prove a conviction for the former offence, and the conviction shall be presumed to have been unappealed against, until the contrary be shown. Convictions to be returned to the quarter sessions. How far evidence in future cases.

By stat. 7 & 8 *G.* 4. *c.* 30. § 15. If any person shall unlawfully and maliciously break down or otherwise destroy the dam of any fishpond, or of any water which shall be private property, or in which there shall be any private right of fishery, with intent thereby to take and destroy any of the fish in such pond or water, or so as thereby to cause the loss or destruction of any of the fish, or shall unlawfully and maliciously put any lime or other noxious material in any such pond or water, with intent thereby to destroy any of the fish therein, or shall unlawfully and maliciously break down or otherwise destroy the dam of any millpond, every such offender shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to be transported beyond the seas for the term of seven years, or to be imprisoned for any term not exceeding two years; and, if a male, to be once, twice, or thrice publicly or privately whipped (if the court shall so think fit), in addition to such imprisonment. 7 & 8 G. 4. c. 30. Breaking down the dam of a fishery, &c., or mill-dam.

5 & 6 C. 47.

Malice against the owner not essential to any offence under this act.

§ 25. Every punishment and forfeiture by this act imposed on any person maliciously committing any offence, whether the same be punishable upon indictment or upon summary conviction, shall equally apply and be enforced, whether the offence shall be committed from malice conceived against the owner of the property in respect of which it shall be committed, or otherwise.

Principals in the second degree, and accessories.

§ 26. In the case of every felony punishable under this act, every principal in the second degree, and every accessory before the fact, shall be punishable with death or otherwise, in the same manner as the principal in the first degree is by this act punishable; and every accessory after the fact to any felony punishable under this act shall, on conviction, be liable to be imprisoned for any term not exceeding two years; and every person who shall aid, abet, counsel, or procure the commission of any misdemeanor punishable under this act, shall be liable to be indicted and punished as a principal offender.

Abettors in misdemeanors.

The court may, in all offences within this act, order hard labour or solitary confinement.

§ 27. Where any person shall be convicted of any indictable offence punishable under this act, for which imprisonment may be awarded, it shall be lawful for the court to sentence the offender to be imprisoned, or to be imprisoned and kept to hard labour, in the common gaol or house of correction, and also to direct that the offender shall be kept in solitary confinement for the whole or any portion or portions of such imprisonment, or of such imprisonment with hard labour, as to the court in its discretion shall seem meet.

Persons in the act of committing any offence may be apprehended without warrant.

§ 28. And, for the more effectual apprehension of all offenders against this act, it is enacted, that any person found committing any offence against this act, whether the same be punishable upon indictment or upon summary conviction, may be immediately apprehended, without a warrant, by any peace-officer, or the owner of the property injured, or his servant, or any person authorised by him, and forthwith taken before some neighbouring justice of the peace, to be dealt with according to law.

§ 29. The prosecution for every offence punishable on summary

without any previous summons (unless where otherwise specially directed), issue such warrant; and the justice, before whom the person charged shall appear or be brought, shall proceed to hear and determine the case. 7 & 8 G. 4. c. 30.

§ 31. Where any offence is by this act punishable on summary conviction, either for every time of its commission, or for the first and second time only, or for the first time only, any person who shall aid, abet, counsel, or procure the commission of such offence, shall, on conviction before a justice of the peace, be liable, for every first, second, or subsequent offence of aiding, abetting, counselling, or procuring, to the same forfeiture and punishment to which a person guilty of a first, second, or subsequent offence as a principal offender is by this act made liable. Abettors in offences punishable on summary conviction.

§ 32. And, with regard to the application of all forfeitures and penalties upon summary convictions under this act, it is enacted, that every sum of money which shall be forfeited for the amount of any injury done (such amount to be assessed in each case by the convicting justice) shall be paid to the party aggrieved, if known, except where such party shall have been examined in proof of the offence, and in that case, or where the party aggrieved is unknown, such sum shall be applied in the same manner as a penalty; and every sum which shall be imposed as a penalty by any justice of the peace, whether in addition to such amount or otherwise, shall be paid to some one of the overseers of the poor, or to some other officer (as the justice may direct) of the parish, township, or place in which the offence shall have been committed, to be by such overseer or officer paid over to the use of the general rate of the county, riding, or division in which such parish, township, or place shall be situate, whether the same shall or shall not contribute to such general rate: Provided, that where several persons shall join in the commission of the same offence, and shall, upon conviction thereof, each be adjudged to forfeit a sum equivalent to the amount of the injury done, in every such case no further sum shall be paid to the party aggrieved than that which shall be forfeited by one of such offenders only; and the corresponding sum or sums forfeited by the other offender or offenders shall be applied in the same manner as any penalty imposed by a justice of the peace is herein-before directed to be applied. Application of forfeitures and penalties upon summary convictions. Proviso.

§ 33. In every case of a summary conviction under this act, where the sum which shall be forfeited for the amount of the injury done, or which shall be imposed as a penalty by the justice, shall not be paid, either immediately after the conviction, or within such period as the justice shall, at the time of the conviction, appoint, it shall be lawful for the convicting justice (unless where otherwise specially directed) to commit the offender to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, according to the discretion of the justice, for any term not exceeding two calendar months, where the amount of the sum forfeited, or of the penalty imposed, or of both (as the case may be), together with the costs, shall not exceed 5*l.*; and for any term not exceeding four calendar months, where the amount, with costs, shall not exceed 10*l.*; and for any term not exceeding six calendar months in any other case; If a person summarily convicted shall not pay, &c., the justice may commit him. Scale of imprisonment.

7&8 G. 4. c. 30. the commitment to be determinable in each of the cases aforesaid, upon payment of the amount and costs.

The justice may discharge the offender in certain cases.

§ 34. Provided that where any person shall be summarily convicted before a justice of the peace of any offence against this act, and it shall be a first conviction, it shall be lawful for the justice, if he shall so think fit, to discharge the offender from his conviction, upon his making such satisfaction to the party aggrieved, for damages and costs, or either of them, as shall be ascertained by the justice.

Form of conviction.

§ 37. The justice before whom any person shall be convicted of any offence against this act may cause the conviction to be drawn up in the following form of words, or in any other form of words to the same effect, as the case shall require; *viz.*

BE it remembered, that on the ——— day of ———, in the year of our Lord ———, at ———, in the county of ———, [or, *riding, division, liberty, city, &c.*, as the case may be,] A. O. *is convicted before me* J. P., *one of his majesty's justices of the peace for the said county* [or *riding, &c.*], *for that he the said* A. O. *did* [specify the offence, and the time and place when and where the same was committed, as the case may be; and on a second conviction, state the first conviction]; *and I the said* J. P. *adjudge the said* A. O. *for his said offence to be imprisoned in the* ——— [or, *to be imprisoned in the* ———, *and there kept to hard labour*], *for the space of* ———, [or, *I adjudge the said* A. O. *for his said offence to forfeit and pay* ——— [here state the penalty actually imposed, or state the penalty and also the amount of the injury done, as the case may be], *and also to pay the sum of* ——— *for costs; and in default of immediate payment of the said sums, to be imprisoned in the* ——— [or, *to be imprisoned in the* ———, *and there kept to hard labour*], *for the space of* ———, *unless the said sums shall be sooner paid;* [or, *and I order that the said sums shall be paid by the said* A. O. *on or before the* ——— *day of* ———]; *and I direct that the said sum of* ———

plainant a notice in writing of such appeal, and of the cause and matter thereof, within three days after such conviction, and seven clear days at the least before such sessions, and shall also either remain in custody until the sessions, or enter into a recognisance with two sufficient sureties before a justice of the peace, conditioned personally to appear at the said sessions and to try such appeal, and to abide the judgment of the court thereupon, and to pay such costs as shall be by the court awarded; and upon such notice being given, and such recognisance being entered into, the justice before whom the same shall be entered into shall liberate such person if in custody; and the court at such sessions shall hear and determine the matter of the appeal, and shall make such order therein, with or without costs to either party, as to the court shall seem meet; and in case of the dismissal of the appeal, or the affirmance of the conviction, shall order and adjudge the offender to be punished according to the conviction, and to pay such costs as shall be awarded, and shall, if necessary, issue process for enforcing such judgment. 7 & 8 G. 4. c. 30.

§ 39. No such conviction, or adjudication made on appeal therefrom, shall be quashed for want of form, or be removed by *certiorari* or otherwise into any of H. M.'s superior courts of record; and no warrant of commitment shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted, and there be a good and valid conviction to sustain the same. No certiorari, &c.

§ 40. Every justice of the peace, before whom any person shall be convicted of any offence against this act, shall transmit the conviction to the next court of general or quarter sessions which shall be holden for the county or place wherein the offence shall have been committed, there to be kept by the proper officer among the records of the court; and upon any indictment or information against any person for a subsequent offence, a copy of such conviction, certified by the proper officer of the court, or proved to be a true copy, shall be sufficient evidence to prove a conviction for the former offence, and the conviction shall be presumed to have been unappealed against until the contrary be shown. Convictions to be returned to the quarter-sessions. How far evidence in future cases.

§ 42. This act not to extend to *Scotland* or *Ireland*.

II. Rules concerning the Assize, and preserving the Breed of Fish.

By stat. 1 *G.* 1. *st.* 2. *c.* 18. § 14. If any person shall lay or draw any net, engine, or other device, or wilfully do or cause any thing to be done in the *Severn*, *Dee*, *Wye*, *Teame*, *Were*, *Tees*, *Ribble*, *Mersey*, *Dun*, *Air*, *Ouze*, *Swaile*, *Calder*, *Wharf*, *Eure*, *Darwent*, or *Trent*, whereby the spawn or fry of salmon, or any kepper or shedder salmon, or any salmon not 18 inches or more from the eye to the extent of the middle of the tail, shall be taken and killed, or destroyed; or shall make, erect, or set any bank, dam, hedge, or stank, or net, cross the same, whereby the salmon therein may be taken, or hindered from passing up to spawn; or shall between *July* 31. and *Nov.* 12. (except in the *Ribble*, where they may be taken between *Jan.* 1. and *Sept.* 15.) take, kill, destroy, or wilfully hurt any *salmon of any* kind or size in any of the said 1 G. 1. st. 2. c. 18. Salmon.

16 I. st. 2. c. 18. rivers; or shall, after *Nov.* 12. yearly, fish there for salmon with any net less than 2½ inches in the mesh; he shall on conviction, in one month, before one justice, on view, confession, or oath of one witness, forfeit 5*l.* and the fish so taken, and the nets, engines, and devices used in doing the same; half the said sum to the informer, and half to the poor; to be levied by distress, rendering the overplus; for want of distress, to be committed to the house of correction, or other county gaol or prison, not more than three months, nor less than one, there to be kept to hard labour, and suffer such other corporal punishment as the justice shall think fit; the said justice shall order the nets, engines, and devices to be cut or destroyed in his presence, and shall cause the banks, dams, hedges, or stanks to be demolished and removed at the charge of the offender, to be levied in like manner.

Note: It is not said who shall have the fish; so that it seemeth that they are forfeited to the king.

Salmon sent to London to weigh 6lb.

§ 15. And no salmon shall be sent to fishmongers or their agents to *London* under six pounds weight; on pain that the sender, buyer, or seller on the like conviction, shall forfeit 5*l.* and the fish; half the penalty and fish to the informer, and half to the poor; the said sum to be levied by distress; for want of sufficient distress, to be committed to the house of correction, or other county gaol or prison, there to be kept to hard labour for three months, if not paid in the mean time.

§ 17. And persons aggrieved may appeal to the next sesssions.

Salmon-spawn and smelts. 13 Ed. 1. st. 1. c. 47. 13 R. 2. st. 1. c. 19.

By stat. 13 *Ed.* 1. *st.* 1. *c.* 47. No salmon shall be taken in the *Humber*, *Ouze*, *Trent*, *Donee*, *Arre*, *Derewent*, *Wharfe*, *Nid*, *Yore*, *Swale*, *Tese*, *Tine*, *Eden*, or any other water wherein salmon are taken, between *Sept.* 8. and *Nov.* 11.; nor shall any young salmon be taken at mill-pools (nor in other places, 13 *R.* 2. *st.* 1. *c.* 19.) from the midst of *April* until the Nativity of St. *John* Baptist, on pain of having the nets and engines burnt for the first offence; for the second, imprisonment for a quarter of a year; for the third, a whole year, and as the trespass increaseth, so shall the

the several rivulets or streams communicating therewith, with legal and proper nets, or hooks and lines, to take, kill or destroy any salmon, salmon-peal, or salmon-kind, and to offer to sale, any such fish so taken between the said periods within the *Teign* and the several rivulets or streams communicating therewith; and also at any time between the 15th of *February* and the 15th of *November*, within the said rivers *Dart* and *Plym*, and the several rivulets or streams communicating therewith, with legal and proper nets, &c. to take, &c. any such salmon, &c. within the said *Dart* and *Plym*, and the several rivulets or streams communicating therewith, and to offer the same to sale when so taken between the said last-mentioned periods, within the said last-mentioned river and waters; and that all such fish shall be considered to be in season, and proper to be killed. 48 G.3. c.lxi.

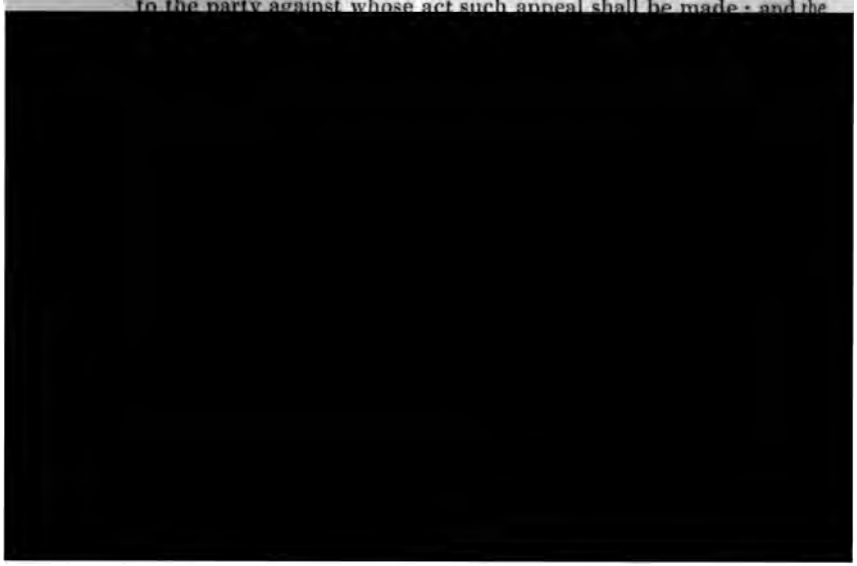
§ 2. Provided that no such owner or other person, nor any of his servants or agents, nor any other person, shall at any time within the *Teign*, or any of the waters communicating therewith on or between the 4th of *Dec.* 1803, and the 4th of *March* 1804, or at any time or times in any subsequent year on or between the 4th of *Dec.* and the 4th of *March* following; and that no such proprietor or other person, nor any of his servants or agents, nor any other person, shall at any time within the said rivers *Dart* and *Plym*, or either of them, or any of the waters communicating therewith respectively, on or between the 15th of *Nov.* 1803, and the 15th of *Feb.* 1804, or at any time or times in any subsequent year on or between the 15th of *Nov.* and the 15th of *Feb.* following, take, kill, or destroy, pursue, hurt, or injure, or attempt, or endeavour, or seek to take, kill, or destroy, or to pursue, hurt, or injure any salmon, salmon-peal, or salmon-kind, or any of the spawn, brood, or fry of salmon, or any kepper or shedder salmon, by any means whatsoever; nor shall any person offer to sale, or dispose of any of the said fish so taken in the said rivers and waters within the periods last aforesaid; and that no person shall at any time hereafter, either within such periods or otherwise within any or either of the said several rivers or waters communicating therewith, pursue, take, kill, or destroy, or seek, or endeavour to take, kill, or destroy, pursue, hurt, or injure any of such fish by means of any engine commonly called a spear, or with any other engine or device of that nature: nor shall any person offer any of such fish for sale if the same shall be so taken as aforesaid. For restraining persons taking salmon, &c. or pursuing or injuring the same.

§ 3. No bouges, otherwise called sea-trout, shall be taken within the said rivers, or any of the waters communicating therewith, between the 29th of *Sept.* and the 2d of *Feb.* following in any year; and none of the fish herein-before mentioned, of whatever kind, shall at any time be pursued, taken, killed, or destroyed, or attempted so to be, or to be otherwise hurt or injured, within any of the said rivers, or the said waters, on a *Sunday*. Sea-trout not to be taken but at certain seasons, &c.

§ 4. And after the passing of this act, every person who shall pursue, take, kill, or destroy, or endeavour or attempt to pursue, take, kill, or destroy, or be aiding or assisting in the pursuing, taking, killing, or destroying any salmon or other such fish as aforesaid, or spawn, brood, or fry aforesaid, in any or either of the said rivers, or within any of the several waters communicating therewith, or with either of them; or shall sell or expose to sale Penalties on persons selling salmon, or offering the same for sale.

.G.3. c.lxi. any such salmon, or other such fish taken contrary to this act, or between the periods before specified in relation to any such fish as aforesaid, and who shall be thereof convicted before any justice for the said county, either upon view or by confession, or by the oath of one witness, or any such owner or proprietor, or other such person legally entitled to fish as aforesaid, or of his agents or servants, shall for the first offence forfeit any sum, to be ascertained by such justice, not less than 40*s.* nor more than 5*l.*, together with such fish, and all the nets and other instruments used or kept for the purpose of committing any such offence, and for the second offence shall forfeit not less than 40*s.* nor more than 10*l.* to be ascertained as aforesaid, together with all such fish, nets, and other instruments as aforesaid; one half of such penalty to go to the informer, and the other half to the poor of the parish or parishes where the offence was committed; such penalty to be levied by distress, by warrant of such justice or justices, rendering the overplus, &c., and for want of such distress, or of payment of such penalty on demand, then such offender shall for every such offence be sent to the house of correction of the county where taken, to be kept to hard labour not exceeding six calendar months, nor less than two calendar months; and the said justice or justices shall order such nets, &c. to be seized and immediately cut in pieces or otherwise destroyed or disposed of in his or their presence, as he or they think proper.

llowing an ppeal. § 5. All persons who think themselves aggrieved by any judgment of any justice or justices in any case aforesaid may appeal to the justices of the said county of *Devon* at their next general quarter sessions for the said county, who are hereby empowered finally to determine the same; so that the person appealing enter into a recognisance before such justice or justices with sufficient sureties to abide the event of such appeal and the determination thereon, and so that such person so appealing shall by himself or his agent give ten days previous notice in writing of such appeal to the party against whose act such appeal shall be made; and the



purpose the provisions of this act within the limits of the jurisdiction of such justices, and within the limits of which they shall be so appointed." 58 G.3. c.48.

and to fix periods or fence-days in which salmon shall not be taken, &c.

§ 2. Where no provision is made by any act now in force for limiting the times within which it shall be lawful to take salmon, or fish of the salmon kind, in any of the rivers in *England*, it shall be lawful for the justices acting for the several counties, at their several quarter sessions of the peace, and they are hereby required, at the request of any person, such person, having first given notice, in some newspaper usually circulated within the county, of his intention to apply to the said quarter sessions in that behalf, to fix certain days, not exceeding 150 days in each year, for each river within their respective counties, to be *fence* days for the several rivers respectively; during which time it shall not be lawful for any person whatever to take, kill, or destroy, or attempt to take, kill, or destroy, any salmon or salmon trout, or fish of the salmon kind, or any brood, spawn, or fry of such fish; and the said justices are further empowered, at any general quarter sessions, to vary annually the number of such days, and the periods at which they shall commence.

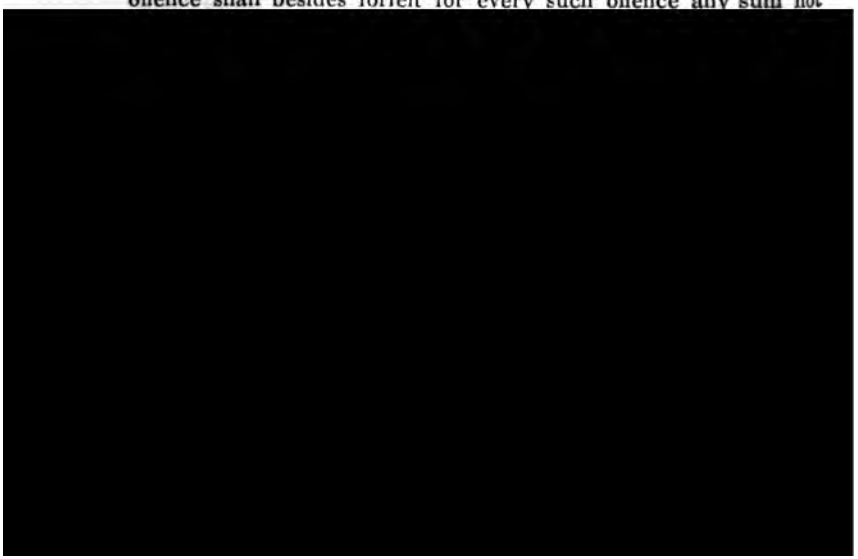
Penalty on persons destroying salmon, or the brood, spawn, or fry thereof.

§ 3. If any person shall at any time hereafter pursue, take, kill, or destroy, or seek or endeavour to take, kill, or destroy, pursue, hurt, or injure, any salmon or salmon kind, by laying or using any hot lime or filth, or material or drug pernicious to fish, or using any water in which any green lint or flax has been steeped, or letting off stagnated water, or any water impregnated with any material or drug pernicious to fish; or if any person shall use or employ any such means as aforesaid, or use any fire or light or white object, or lay down any kind of net, engine, or device, or wilfully do or commit, or cause to be done or committed, any act whatsoever, in any river, water, rivulet, stream, mill-dam, mill-sluice, cut, pool, or pond communicating therewith, for the destruction of the brood, spawn, or small fry of salmon therein (angling excepted); or if any person shall hereafter make, erect, or set any bank, dam, hedge, or stank, net or nets, or place any fire or fires, light or lights, or any white object or objects, so that the young fry or young salmon be prevented from going down from such rivers, rivulets, or other waters communicating therewith as aforesaid, or any of them, every such person shall for every such first offence forfeit any sum not exceeding 10*l.* nor less than 5*l.*, and for every second and subsequent offence any sum not exceeding 15*l.* nor less than 10*l.*, at the discretion of the justice before whom the offender shall be convicted, and shall also forfeit all the fish, spawn, brood, or fry so taken, and all the nets, weapons, lines, instruments, boats, devices, or things used in the taking thereof. Penalties.

Penalty on persons having in possession spawn, fry, or brood of fish, unsizeable fish, or kepper, &c. or old salmon, &c.

§ 4. No person shall, at any time after 1st *September* 1818, take, kill, or destroy, or knowingly have in his or her possession, either on the water or on the shore, or shall bring to shore, or cry or carry about, sell, offer, or expose to or for sale, or shall exchange for any goods, matter, or thing, any spawn, fry, or brood of fish, or any unsizeable fish, or any kepper or shedder salmon, being unseasonable salmon commonly called *old salmon*, or any salmon caught in any river during the periods when fishing for salmon is prohibited under the provisions of any law now in force, or when the same shall be prohibited by any order to be made by the justices

G. 3. c. 43. at their sessions as herein-before provided; and it shall be lawful for any conservator or overseer thereof, or any other person, under the authority of this act, to take and seize all or any such spawn, fry, or brood of fish, or such other fish as aforesaid, wherever the same shall be found, together with all baskets and package in which the same shall be so found or taken, and to deliver the person on whom the same may be found to a constable or other peace officer; and after every such seizure shall be made, the spawn, fry, or brood, or other fish as aforesaid, together with the baskets and package in which the same shall be so seized, shall be delivered into the hands of some constable or other peace officer; and every such constable or other peace officer is hereby authorised and required to take every such offender with whom he shall be so charged for any such offence into his custody, and also the spawn, fry, or brood of fish, and such other fish as aforesaid, and all baskets and packages in which the same shall be so seized, and which shall be delivered to such constable or other peace-officer, and to carry such offender, and all such spawn, fry, or brood of fish, and such other fish as aforesaid, together with the baskets and package, with all convenient speed, before some justice or magistrate of the county, city, or place where the offence shall be committed, for such offender to be dealt with according to law; and on the conviction of any such offender for any such offence, before any such justice or magistrate, every such offender shall forfeit all such spawn, fry, or brood of fish, unsizeable fish, and fish out of season, which shall be so seized, together with all baskets or package in which the same shall be so seized; and all such spawn, fry, or brood of fish, or such other fish, together with such baskets, and package in which the same shall have been so seized, shall, by order of the justice before whom the same shall be so brought, be delivered to the person who shall have so seized the same, and shall prosecute to conviction any such offender; and every offender who shall be so convicted of any such offence shall besides forfeit for every such offence any sum not



and in case any person who shall be convicted of any offence against this act, and shall not immediately upon such conviction pay down the penalty, together with such costs, into the hands of the justice or magistrate, before whom he shall have been so convicted, or other person authorised to receive the same, in order that the same may be distributed according to the directions of this act, it shall be lawful for any such justice or magistrate to order any constable or other peace officer to take the charge of and keep in custody any such person so convicted; and immediately thereupon every such justice or magistrate is hereby authorised, empowered, and required to grant his warrant in due form of law, and thereby commit every such offender to the common gaol or house of correction for the county, shire, division, city, or place for which such justice or magistrate shall act, for such time hereinafter mentioned, unless the said penalty and costs shall be sooner paid; or otherwise such justice or magistrate may grant his warrant (K) in due form of law, to levy and recover the said penalty and costs by distress and sale of the offender's goods and chattels; and all penalties and forfeitures which shall be so paid or levied shall from time to time be paid, applied, and disposed of as follows; (that is to say,) one moiety thereof to the informer, and the other, after defraying all costs, charges, and expenses attending the prosecution, and the levying and recovering of the penalty, to the overseers of the poor of the parish or place where the offence shall have been committed; and the overplus of the money levied remaining (if any there be), after any penalty, and all costs, charges, and expenses attending the levying and recovering thereof are deducted, (which costs, charges, and expenses shall always be ascertained by the justice or magistrate before whom any such offender shall be convicted,) shall on demand be returned to the owner of the goods so distrained; and in case sufficient distress shall not be found, or such penalty and costs shall not be immediately paid, then it shall be lawful for any such justice or magistrate, and he is hereby authorised, empowered, and required, for the first offence, to commit (L) every such offender to such gaol or house of correction for any time not exceeding four months nor less than two months; for the second offence, any time not exceeding eight months nor less than six months; and for the third and every other offence, for any time not exceeding twelve months nor less than eight months, there to be kept at hard labour, and be and remain without bail or mainprize.

58 G. 3. c. 43.

1st offence.

2d offence.

3d offence.

§ 7. It shall be lawful for any justice or magistrate, upon information (G) being made to him upon oath against any person who shall offend against any thing contained in this act, to grant his warrant to apprehend any person so offending, and cause such offender to be brought before him, or some other such justice or other magistrate; or it shall be lawful for any such justice or magistrate, upon any information made without oath, to grant his summons (H) against the party charged with any such offence, or for any witness to prove any such offence; and if any such person who shall be duly summoned shall neglect to appear at the time and place appointed by such summons, every such justice or magistrate may, upon oath being made of the person being so duly summoned, *grant his warrant* to apprehend and bring

Justices, on receiving information, may grant warrants for apprehending offenders.

8 G.3. c.43. before him or some other such justice or magistrate the party who shall neglect to appear, and such justice or magistrate shall enquire into, hear, and determine the matter of every such offence in a summary way.

Owners, &c. of fisheries may be witnesses to prove offences.

§ 8. No owner, farmer, or occupier of, or any person otherwise interested in any fishery or right of fishing in any arm of the sea, river, or other water aforesaid, shall be deemed an incompetent witness to prove any offence committed against this act, by reason of his or her being such owner, farmer, or occupier.

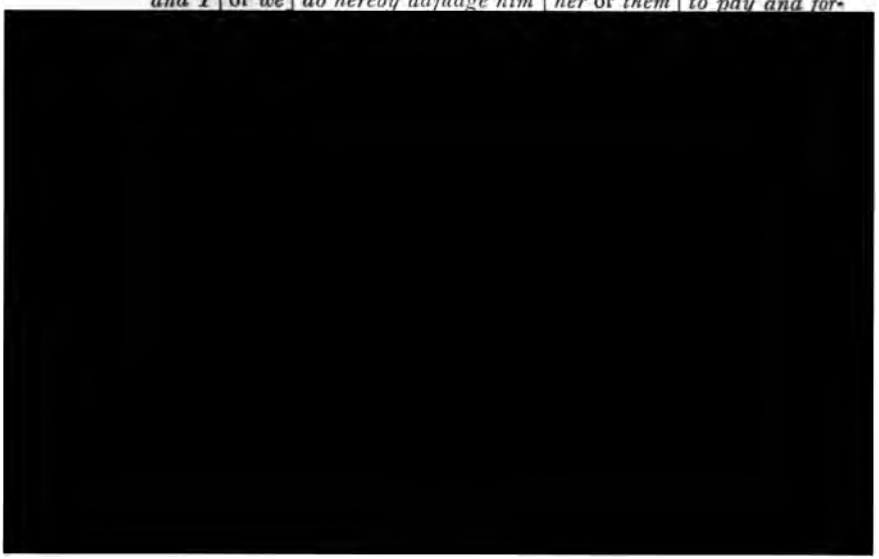
Penalties may be sued for.

§ 9. Every pecuniary penalty and forfeiture imposed by this act may be recovered in a summary manner according to the provisions of this act, or may be sued for and recovered, together with full costs of suit, by and to the only proper use and behoof of any person who shall inform or sue for the same in any court of record at *Westminster*, by action of debt, bill, plaint, or information, wherein no essoign, wager of law, nor more than one imparlance shall be allowed.

Form of conviction.

§ 10. Every conviction shall be certified by the justice by and before whom made, to the general quarter sessions of the peace to be held in and for the county, riding, division, city, or place where the offender shall be convicted, and there filed amongst the records; and every conviction shall be in the form of words, or to the following effect: —

BE it remembered, that on the ——— day of ——— in the year ——— A. B. *was, upon the complaint of* C. D. *convicted before me* [or *us*] E. F. *one* [or *two*] *of his majesty's justices of the peace* [as the case may be] *for ——— in pursuance of an act made in the fifty-eighth year of the reign of his majesty King* George *the third* [insert the title of the act,] (*a*) *for that the said ———* [state the offence,] [and if a case in which different penalties are imposed for repeated offences] *this being the first offence, [second,* or *third offence,* as the case may be,] *and I* [or *we*] *do hereby adjudge him* [*her* or *them*] *to pay and for-*



county, shire, division, city, or place where such judgment shall be given, at the then next or next but one general quarter sessions of the peace; but no such appeal shall be received, heard, or determined, unless the appellant shall, within ten days next after such judgment, and twenty days at the least before the holding of such sessions, give and leave in writing, as well at the public office of the clerk of the peace for such county, shire, division, city, or place where such person or persons shall be convicted, as to the person or at the dwelling-house of the informer or prosecutor, of his intention to bring such appeal, and shall also enter into a recognisance (I) before such justice, in such sum as any such justice of the peace shall think fit, not exceeding 20*l.*, conditioned to try such appeal, and likewise to pay the costs of such appeal, in case judgment and sentence shall upon the hearing thereof be given against the appellant, within ten days next after the determination thereof; and the said justices at their said session shall and may, upon due proof of such notice given as aforesaid, hear and determine every such appeal in a summary way, and shall award or order to the party in whose behalf such appeal shall be determined such costs and charges as they in their discretion shall think reasonable and just, to be paid by the party against whom such appeal shall be determined; and in case such costs and charges shall not be paid within the space of ten days next after the hearing and determining of such appeal, the same may be levied by distress and sale of the goods and chattels of the person ordered to pay the same, or his surety or sureties, in the same manner and by the same means as all distresses are ordered to be taken by virtue of this act. 58 G. 3. c. 43.

§ 13. No action of law shall be brought for any thing done in execution of this act, until one calendar month after notice in writing and within three calendar months next after the cause of action shall arise, and shall be sued in the county or place where the fact shall have been committed; and the defendant, at any time before action brought, may tender amends; and no action, information, or other proceeding shall be brought or commenced against any person for any offence against this act, unless the same shall be commenced within six calendar months next after any such offence shall have been committed. Limitation of actions.

§ 14. Nothing in this act contained shall extend or alter any act or clause, provision, regulation, or penalty or forfeiture contained in any act in force for the regulation of any fishery or fisheries, or the preservation thereof, or of the brood, spawn, or fry of fish, in any particular county or arm of the sea, estuary, or river. Not to affect the provisions of any former act;

§ 15. Nothing herein contained shall extend to affect the rights of any lord or lady of any manor; and it shall be lawful for such lord or lady, and they are hereby required, to appoint conservators for the protection of any river or rivers within their respective manors. nor the rights of manors.

§ 16. Nothing in this act contained shall extend to prejudice or derogate from the rights, interests, privileges, franchises, or authority of any body politic, corporate, or collegiate. Not to affect the rights of corporations;

§ 17. Nor of the mayor and commonalty and citizens of the city of *London*, or their successors, or the lord mayor of the said city. or of the city of London.

5 G. 3. c. xxxiii. And by stat. 45 *G.* 3. *c.* xxxiii. certain other provisions are enacted with respect to the rivers in the county and borough of *Carmarthen*.

8 R. 2. st. 1. c. 19. By stat. 13 *R.* 2. *st.* 1. *c.* 19. No person shall put in the waters of *Thamise*, *Humber*, *Ouze*, *Trent*, nor any waters, in any time of the year, any nets called stalkers, nor other nets or engines whatsoever, by which the fry or breed of salmons, lampreys, or any other fish, may in anywise be taken or destroyed; on the like pain. See stat. 13 *Ed.* 1. *st.* 1. *c.* 47.

The waters of *Lone*, *Wyre*, *Mersee*, *Rybbyl*, and all other waters in *Lancashire*, shall be put in defence as to taking of salmon from *Michaelmas* to *Candlemas*, and in no other time of the year. And conservators shall be appointed in like manner.

17 R. 2. c. 9. By stat. 17 *R.* 2. *c.* 9. The justices of the peace (and the mayor of *London* on the *Thames* and *Medway*) shall survey the offences in both the acts above mentioned; and shall survey and search all the wears in such rivers, that they shall not be very strait for the destruction of such fry and brood, but of reasonable wideness after the old assize used or accustomed; and they shall appoint under-conservators, who shall be sworn to make like survey, search, and punishment. And they shall enquire in sessions, as well by their office as at the information of the under-conservators, of all defaults aforesaid, and shall cause them which shall be thereof indicted to come before them; and if they be thereof convicted, they shall have imprisonment, and make fine at the discretion of the justices; and if the same be at the information of an under-conservator, he shall have half the fine.

1 El. c. 17. Spawn in general, and fish under size and out of season. By stat. 1 *El.* *c.* 17. § 1, 2, 3, 4, 5. No person of what estate, degree, and condition soever he be, shall take and kill any young brood, spawn, or fry of fish; nor shall take and kill any salmon or trouts, not being in season, being kepper or shedder; nor any pike or pikerel not being in length 10 inches fish or more; nor any salmon not being in length 16 inches fish; nor any trout not being in length eight inches fish; nor any barbel not being in



By stat. 33 *G.* 2. *c.* 27. § 13. 15, 16, 17, 18, 19. No person shall take, or knowingly have in his possession either in the water or on shore, or sell or expose to sale, any spawn, fry, or brood of fish, or any unsizeable fish, or fish out of season, or any smelt not five inches long; and any person may seize the same, together with the baskets and package, and charge a constable or other peace officer with the offender and with the goods, who shall carry them before a justice; and on conviction before such justice, the same shall be forfeited and delivered to the prosecutor; and the offender shall besides forfeit 20*s.*, to be levied by distress by warrant of such justice, and distributed half to the prosecutor, and half to the poor of the parish where the offence was committed, (and any inhabitant of such parish, nevertheless, may be a witness;) for want of sufficient distress, to be committed to the house of correction to be kept to hard labour for any time not exceeding three months, unless the forfeiture be sooner paid.——— Provided, that the justice may mitigate the said penalty, so as not to remit above one half. Persons aggrieved may appeal to the next sessions. —— And the form of the conviction may be thus: — 33 G.2. c.27.

BE it remembered, that on this ——— day of ———, in the ——— year of the reign of ———, A. O. is convicted before me ———, one of his majesty's justices of the peace for the ——— of ———, and I do adjudge him to pay and forfeit the sum of ———. Given under my hand and seal the day and year above said.

By stat. 2 *H.* 6. *c.* 15. No person shall fasten any nets over rivers, to stand continually day and night; on pain of 100*s.* to the king. 2 H.6. c.15. Nets standing day and night.

III. Of the Herring and other Fisheries.

By stat. 28 *G.* 2. *c.* 14. § 9. If any person shall wilfully damnify, spoil, or destroy, without consent of the society of the *Free British Fishery*, any of the nets, sails, cordage, stores, or other materials belonging to the said society, he shall, on conviction on the oath of two witnesses before one justice, forfeit to the society treble value, to be levied by distress; and for want of sufficient distress, be committed to the house of correction there to be kept to hard labour for any time not exceeding three months, or till satisfaction be made; information to be exhibited, or prosecution to be in six calendar months. 28 G.2. c.14. Herring fishery.

By stat. 26 *G.* 3. *c.* 81. After 1st *June*, 1787, an annual bounty is granted for seven years to owners of ships of certain dimensions and constructions (which by stat. 27 *G.* 3. *c.* 10. is extended to all vessels however built), of 15 tons and upwards, employed in the *White Herring* fishery, under certain regulations particularly set forth in those acts; and so far as the same fall under the jurisdiction of justices of the peace, it is thought necessary to insert them as follows: — 26 G.3. c.81.

By § 17, 18. On all barrels and casks in which any fish (except fresh fish) shall be packed, either for exportation or home consumption, the names of the curers of such fish shall be marked and burnt with iron, in fair, large, legible, conspicuous, and permanent characters; and *the staves* of every barrel in which any Casks to be marked.

26 G.3. c.81.

Thickness of the staves.

white herrings, or wet white fish, shall be packed or put up for exportation, shall not be a less thickness at the bulge than half an inch, and shall be full bound; and in default thereof the same may be seized and secured by any officer of excise or customs; and on proof of the fact on oath, before one justice, the same, together with the casks, shall be forfeited.

Fishermen may set up trades.

§ 19. And every person who for seven successive years shall have followed the occupation of a seaman or fisherman on board any ship or vessel employed in the fisheries of *G. B.* (being a married man), may set up and exercise such trade as he is apt and able for, in any town or place in *G. B.* without molestation by reason of using such trade, as freely and with the same provisions and regulations as any mariner or soldier by 22 *G.* 2. *c.* 44. are authorised to do. (*a*)

Certain penalties imposed by 1 G.1. c.18. and 9 G.2. c.33. may be recovered by two justices.

§ 43. And whereas by stats. 1 *G.* 1. *c.* 18. and 9 *G.* 2. *c.* 33. No sort of flat fish nor fresh fish whatsoever (except turbots and lobsters) could be legally imported, or sold in *England*, which were taken by, bought of, or received from any foreigner, or out of any strange bottom (except protestant strangers) inhabiting this kingdom, on forfeiture of 100*l.* by the person offending; and the master of the vessel in which any such fish shall be illegally imported was also liable to forfeit 50*l.* to be recovered in the courts at *Westminster:* And whereas the great expense and delay attending such prosecutions discourage persons from suing for such penalties; it is therefore enacted, that if upon complaint made on oath before two justices by any officer, it shall appear that he doth know, or is credibly informed, or hath cause to believe that any fish hath been imported or exposed to sale in the port of *London*, contrary to the aforesaid acts, such justices may summon the person accused to appear before them at a time and place specified in the summons; and if he shall not appear, then on due proof of service of such summons, either personally or by leaving the same at his usual place of abode whilst he shall be on shore, or not being on shore, with some person in the



26 G.3. c.81.

§ 47. To the end that the person convicted in any of the penalties last aforesaid may not by flight after conviction evade imprisonment, such justices, immediately after conviction, may order such offender into custody (in case the penalty be not immediately paid) during such time, not exceeding 48 hours, as they shall think proper to allow for return of the warrant of distress.

Offenders may be detained for 48 hours.

§ 48. Provided, that if it shall appear to the satisfaction of such justices, either by confession or other witness, that such party hath not goods or chattels sufficient to answer the penalty, such justices may, without issuing any warrant of distress, commit the party so convicted, as if such warrant had actually issued, and a return of *nulla bona* been made thereon.

Where the goods are not sufficient to answer the distress.

§ 49. Provided also, that if any such offender ordered to be committed shall, before his actual commitment to prison, procure security to be given by two sufficient sureties for payment of the penalty and charges within 14 days exclusive of the day of conviction, the justices may accept such security; and on nonpayment within the time limited, the same or any other justices may cause the party convicted, and his sureties, to be apprehended by warrant, and them may commit to the common gaol, for the same time as the person convicted was liable to have been imprisoned, if no security had been given, unless the penalty and charges shall be sooner paid.

Security may be given for payment of the penalty.

§ 50. Any person so convicted thinking himself aggrieved by the judgment of any justices, may within three calendar months then next appeal to the sessions, giving six days' notice to the informer of such his intent, and with two sureties entering into recognisance before one justice to appear and prosecute such appeal and abide the order or determination of the same court, and pay the costs awarded at such sessions (if any); and if such judgment be affirmed, the party appealing shall pay to the informer double costs, to be ascertained by order of the court.

Appeal.

§ 51. In case the person appealing shall have paid the penalty into the hands of the justices by way of deposit, or shall be then imprisoned, such person may appeal within the time aforesaid, on his entering (without sureties) into such recognisance as aforesaid, and remaining in prison in the mean time, or depositing such penalty with the justices, until the merits of the said appeal shall be determined.

§ 52. No conviction or judgment as aforesaid shall be set aside by the sessions for want of form, or through the mis-stating of any fact, circumstance, or other matter, provided the material facts alleged in such conviction or judgment, and on which such conviction shall be grounded, be proved to the satisfaction of the court; and no such conviction or judgment, nor any order or proceeding of the said court, shall be removed by *certiorari* into any other court.

Conviction not to be set aside for want of form.

§ 44. Persons appearing in the complaint to be necessary witnesses may be summoned by the justices to appear before them; and in case of non-appearance, then, on due proof of having been duly summoned, may be apprehended by warrant of such justices, and brought before them; and if any witness shall refuse to be sworn, or to give evidence, or wilfully forswear himself, or prevaricate in his evidence, such justices may by warrant commit him to the common gaol for one year without bail.

Witnesses.

26 G.3. c.81.

Written evidence.

§ 45. And the examination of every witness shall be taken down in writing, by or before the said justices, and in case the party accused cannot be made to appear at the time of such examination, and such witness cannot be made to attend when such party shall appear; in that case such examination in writing may be read and made use of, and shall have the same effect as if such witness had been examined *vivâ voce*.

48 G.3. c.110.

By stat. 48 *G.* 3. *c.* 110. Many important regulations are enacted respecting the herring fishery: but they are not inserted in this place, as being so confined in their nature and objects. It may be observed, however, that by the 57th sect. of the act, the several penalties and forfeitures thereof may be recovered in the same manner as penalties and forfeitures under the excise laws.

55 G.3. c.94.

Stat. *55 G.* 3. *c.* 94. After reciting stats. 48 *G.* 3. *c.* 110., *51 G.* 3. *c.* 101. *52 G.* 3. *c.* 153., and *54 G.* 3. *c.* 102., enacts that the same be made perpetual, subject to such alterations as are herein contained.

Mode of settling disputes between officers and curers.

By § 36. All disputes between officers of the herring fishery and curers or proprietors of herrings, as mentioned in stat. 48 *G.* 3. *c.* 110. shall be settled as follows: "Any justice of the peace to whom application shall be made, either by the officer or curer, shall appoint two skilful persons, who shall have no interest in the matter in dispute; one to be nominated by the officer and the other by the opposite party; and if either party shall fail to make such nomination before or at the time when he shall be required by authority of the said justice (not being longer than twenty-four hours from the time of being required to make such appointment) so to do, then the said justice shall nominate one skilful person, not interested in the matter in dispute, in his place; and the person so appointed, upon examination of the matters in dispute, shall certify on their oaths, to be taken before the said justice, their opinion on the matters aforesaid; and if they shall agree in their opinion, the matter in dispute shall be determined accordingly; but if the arbitrators so to be appointed shall differ in opinion



superintendent of the *British* herring fishery, other than the said deep-sea fishery.

sea herring fishery, repealed.

§ 3. From and after the passing of this act, it shall be lawful for the commissioners for the *British* white-herring fishery, from time to time, to make such rules and regulations, directing by what means and methods the provisions of the acts herein recited, and now in force, or of this act, or of any act hereafter to be made relating to the said fishery, shall be observed, performed, and put in execution, and the purposes thereof duly answered, as to the said commissioners shall seem expedient; and that all such rules and regulations shall be as valid and effectual as if the same were set forth in this act, and shall be obeyed and carried into execution by the officers of the *British* herring fishery, and all other persons concerned; and that no bounty granted by the said act of the *55 Geo.* 3., or by this act, shall be allowed or paid to any person, unless all such rules and regulations shall be duly complied with.

The commissioners for the British herring fishery may make regulations for carrying into execution the purposes of this and the recited acts.

No bounty to be paid unless rules complied with.

§ 4. From and after the passing of this act, if any white herrings caught and cured in the *Irish* fishery, and for which any bounty granted for the encouragement thereof shall have been paid or allowed, shall be produced to any officer of the *British* fishery, for the purpose of obtaining any bounty granted for the encouragement of the same; or if any white herrings caught and cured in the *British* fishery, and for which any bounty granted for the encouragement thereof shall have been paid or allowed, shall be produced to any officer of the *Irish* fishery, for the purpose of obtaining any bounty granted for the encouragement of the same, all such herrings, with the barrels containing the same, shall be forfeited, and may be seized by any officer of the fishery, customs, or excise; and the person or persons producing the same shall also forfeit, for every such offence, the sum of 500*l.*, to be recovered and applied in such manner as any penalty under any act in force for the encouragement of the fisheries in *G. B.* or *Ireland*.

If herrings caught in the Irish fishery shall be produced to the officers of the British fishery, or if caught in the British fishery and produced to the officers of the Irish fishery, for the bounty, the same shall be forfeited, &c.

§ 5. From and after the passing of this act, if any person buying or receiving fresh herrings shall, for the purpose of ascertaining the quantity thereof, make use of, or shall have in his possession any cran or measure which, whether the same shall or shall not be branded with such marks or characters as is required by stat. *55 G.* 3. *c.* 94. shall be of greater content or capacity than is or shall be required by the rules or regulations of the said commissioners of the *British* herring fishery, every such person making use of or having in his possession any such cran or measure, shall forfeit the same, and also the sum of 10*l.*, to be recovered and applied in the same manner as the like forfeitures are directed to be recovered and applied by the last recited act; and the commissioners for the *British* herring fishery shall cause the said cran or measure to be burnt.

If any person buying, &c. fresh herrings shall use, or have in possession, any cran or measure of greater content than required by the regulations of the British herring-fishery, he shall forfeit the same, and 10*l.*

§ 6. Giving 4*s.* bounty on every barrel of herrings caught in the Manx fisheries, is repealed, by stat. *5 G.* 4. *c.* 64. § 1. *post.*

§ 7. All powers or authorities, rules, regulations, restrictions, fines, penalties, or forfeitures, in or by the said acts of the *48 & 55 G.* 3. and this act, as far as the same are or shall be applicable, and can be put in execution, shall extend to and be in force in the *Isle of Man*: Provided, that the bounty hereby extended to the *Isle of Man* shall be paid by order of the commis-

Regulations, &c. in acts *48 & 55 G.* 3. extended to the Isle of Man.

The bounty extended to the

1 & 2 G. 4. c. 79.

Isle of Man to be paid by the excise in Scotland.

Recovery of penalties.

sioners of excise in *Scotland*, in the same manner as the bounty of 4*s.* (now repealed, 5 *G.* 4. *c.* 64. § 1.) for every barrel of white herrings caught in *British* fisheries, and landed in *G. B.*, is directed to be paid; and that any such fine, penalty, or forfeiture as aforesaid shall or may be sued for, recovered, levied, mitigated, and applied as any fine, penalty, or forfeiture may be sued for, recovered, levied, mitigated, and applied by any law or laws of customs or excise in *G. B.*, or by any law of customs in the *Isle of Man*.

Regulations in recited act regarding herrings imported in barrels from Ireland, or the Isle of Man, repealed.

§ 8. After reciting stat. 55 *G.* 3. *c.* 94. requiring herrings imported from *Ireland*, or the *Isle of Man*, &c. to have the barrels branded with the names of the countries from whence they come, enacts, that the said act, and the regulations, restrictions, and forfeitures therein contained, so far as relates to white herrings contained in barrels or casks imported or brought into any port or place in *G. B.*, from any port or place in *Ireland* or the *Isle of Man*, shall be repealed.

Quorum of commissioners.

§ 9. And any thing by this act directed or required to be done by the commissioners for the *British* herring fishery shall and may be done by such number of them as by the letters patent for the appointment of such commissioners is or shall be determined.

5 G. 4. c. 64.

By stat. 5 *G.* 4. *c.* 64. intituled "An act to amend the several acts for the encouragement and improvement of the *British* and *Irish* fisheries," the bounty of 4*s.* per barrel of herrings granted by stat. 55 *G.* 3. *c.* 94. (British *White-Herring Fishery*); the bounty of 4*s.* granted by 1 & 2 *G.* 4. *c.* 79. for every barrel of herrings caught in the fisheries of the *Isle of Man*, or other *British* fisheries, in vessels or boats fitted out from the said isle, landed there, and cured and packed as directed by that act; and also the bounties granted by stats. 1 *G.* 4. *c.* 103., 59 *G.* 3. *c.* 109., and 1 *G.* 4. *c.* 82., were repealed from and after 5th *July*, 1825.

After July 5. 1825, bounties and allowances on British herrings, &c. repealed.

After July 5. 1825, to July 5. 1829, new

And by § 2. from and after 5th *July*, 1825, and until 5th *July*, 1829, the respective bounties therein-after mentioned were directed to be paid in respect of herrings, and of dried or pickled

By § 8. All fish cured in any part of the U. K. of *G. B.* and *Ireland* are exempted and excepted from any duty of customs payable on goods, wares, and merchandise exported from *G. B.* or *Ireland*; any thing in any act or acts to the contrary notwithstanding. 5 G. 4. c. 64. Fish exempted from all duties on exportation.

By stat. 7 *G.* 4. *c.* 34. § 1. Certain bounties are granted on salmon, herrings, and sprats, exported from *G. B.* to foreign parts, but to cease on 5th *April*, 1830. 7 G. 4. c. 34. Bounties on salmon, &c. exported.

§ 2. The bounties granted by 5 *G.* 4. *c.* 64. are continued until 5th *April*, 1830. Bounties granted by 5 G 4. c. 64. continued.

By stat. 7 *G.* 4. *c.* 47. Certain bounties are granted on salmon, herrings, and sprats, exported from *Ireland*. 7 G. 4. c. 47. Irish act.

IV. Of the Oyster Fisheries.

By stat. 7 & 8 *G.* 4. *c.* 27. The stat. 31 *G.* 3. *c.* 51. (for the protection of the oyster-fisheries within this kingdom) is repealed. 7 & 8 G. 4. c. 27.

By stat. 7 & 8 *G.* 4. *c.* 29. § 36. If any person shall steal any oysters or oyster-brood from any oyster-bed, laying, or fishery, being the property of any other person, and sufficiently marked out or known as such, every such offender shall be deemed guilty of larceny, and, being convicted thereof, shall be punished accordingly; and if any person shall unlawfully and wilfully use any dredge, or any net, instrument, or engine whatsoever, within the limits of any such oyster-fishery, for the purpose of taking oysters or oyster-brood, although none shall be actually taken, or shall, with any net, instrument, or engine, drag upon the ground or soil of any such fishery, every such person shall be deemed guilty of a misdemeanor, and, being convicted thereof, shall be punished by fine or imprisonment, or both, as the court shall award; such fine not to exceed 20*l.*, and such imprisonment not to exceed three calendar months; and it shall be sufficient in any indictment or information to describe, either by name or otherwise, the bed, laying, or fishery in which any of the said offences shall have been committed, without stating the same to be in any particular parish, township, or vill: Provided that nothing herein contained shall prevent any person from catching or fishing for any floating-fish within the limits of any oyster-fishery with any net, instrument, or engine adapted for taking floating fish only. 7 & 8 G. 4. c. 29. Stealing oysters or oyster-brood from oyster-beds. Dredging for oysters within the limits of any oyster-fishery. Proviso.

Note. — See the form of conviction and the several clauses of this statute, relating to the apprehension and punishment of offenders, and recovery of fines, penalties, &c. inserted *ante*, § 1. of this title, as to fishing in ponds, &c. p. 440. *et seq.*

V. Rules concerning fishing in or near the Sea.

By stat. 9 *G.* 2. *c.* 33. § 4. No person shall take, kill, or destroy any lobsters on the coast of *Scotland* from *June* 1. to *Sept.* 1. on pain of 5*l.*; to be recovered by any person who shall inform and sue for the same, on a summary complaint, before two justices of the shire on the coast where the offence shall be committed. 9 G. 2. c. 33. Lobsters.

By stat. 3 *J.* *c.* 12. § 2. Every person who shall set up any new wear along the sea-shore, or in any haven, harbour, or creek, or within five miles of the mouth of any haven or creek, shall, on conviction before one justice or *mayor*, forfeit for every offence 10*l.*, 3 J. c. 12. Erecting a new wear.

3 J. c. 12. half to the king, and half to him that shall sue, to be levied by the constables or churchwardens by distress.

Spawn of sea-fish. § 2. Every person who shall willingly take, destroy, or spoil any spawn, fry, or brood of any sea-fish, in any wear or other engine or device whatsoever, shall forfeit for every offence 10*l.* in like manner.

This provision appears to be confined to floating, and does not comprehend shell-fish.

Of oysters. *Bridger* q. t. v. *Richardson*, E. 1814. 2 *M.* & *S.* 568. Action, q. t. to recover a penalty of 10*l.* under this statute, for willingly, with a certain engine called a dredge, taking in *Chichester* harbour three gallons of oyster fry and spat, the same being sea-fish, and then of a size unfit for food; 2d. count, for a similar penalty, for willingly, with a certain other engine called a drag, taking 100 bushels of spawn, and 100 bushels of brood of sea-fish, to wit, of oysters, the same being sea-fish. At the trial, at *Sussex Lent Assizes*, 1814, it was proved that the defendant, who was a *Colchester* fisherman, took the brood in question for the purpose of carrying them to *Colchester*, to be laid down there on private lands for further growth and maturity, and to make them marketable. The counsel for the defendant objected, 1st, That the taking must be with intent to destroy, the contrary of which was proved; 2dly, That the act of parliament applied only to floating fish; upon which a verdict was taken for the plaintiff for one penalty of 10*l.* on the second count, with liberty to the defendant to move for a nonsuit. Accordingly a rule was obtained for that purpose, and the court of K. B., after long and elaborate arguments by counsel on each side, held the case not to fall within the comprehension of the statute, for the taking could not be penal, when the object was to *preserve* and not to *destroy*.

Size of nets at sea. § 2. And every person who shall fish in any haven, harbour, or creek, or within five miles of the mouth of any haven, harbour, or creek of the sea, with any draw-net, or drag-net under three inches mesh, *viz.* 1½ inch from knot to knot (except for the taking of



By § 7. If any person shall bring to shore, or expose to sale, or shall exchange for any other goods, matter, or thing, any fish less than the following sizes from the eyes to the extent of the tail, *viz.* bret or turbot 16 inches, brill or pearl 14, codling 12, whiting 6, bass and mullet 12, sole 8, place or dab 8, flounder 7, he shall forfeit the fish to the poor, and also 20*s.*, half to the informer, and half to the poor; to be levied in the like manner; for default of payment or of sufficient distress, to be sent to the next house of correction, or other common gaol or prison of the county, city, town, or place, to be severely whipped and kept to hard labour six days and not longer than fourteen. Persons aggrieved may appeal to the next sessions. The prosecution must be within one month. 1 G. 1. st. 2. c. 18. Size of sea-fish.

But by stat. 33 *G.* 2. *c.* 27. § 11. Bret or turbot, brill or pearl, although under the said dimensions, may be exposed to sale, so as the same be not sold by retail for above 6*d.* a pound. And if any greater price shall be demanded or taken, or such fish shall not be weighed and measured, if required, the same shall be forfeited, and the offender shall also forfeit 20*s.*, to be recovered, mitigated, and applied as the penalties in the said act mentioned under the last head relating to the spawn of fish, and fish under size, and out of season; and the money paid shall be returned to the party who paid the same. 33 G. 2. c. 27.

VI. Importing Fish.

By stat. 18 *C.* 2. *c.* 2. If any ling, herring, cod, or pilchard, salmon, eels, or congers, taken by foreigners, shall be imported or exposed to sale; any person may seize the same, half for himself, and half for the poor. 18 C. 2. c. 2. May be seized.

And by stat. 1 *G.* 1. *st.* 2. *c.* 18. and 9 *G.* 2. *c.* 33. No fish taken by or received of any foreigner, except protestants inhabiting in *England*, shall be imported (except eels, stock-fish, anchovies, sturgeon, botarge, or cavear, lobster and turbot,) on pain of 100*l.* and the master of the vessel 50*l.*; half to the poor, and half to the informer who shall sue in 12 months in any of the courts at *Westminster*. 1 G. 1. st. 2. 9 G. 2. c. 33. Penalty, 100*l.*

The fish-markets in *London* and *Westminster* are regulated by the statutes of 22 *G.* 2. *c.* 49. — 29 *G.* 2. *c.* 39. — 33 *G.* 2. *c.* 27. — 2 *G.* 3. *c.* 15., and 42 *G.* 3. *c.* 19., which are not of sufficient general interest to be here inserted. See *Tyrwh.* and *Tynd. Digest of the Statutes*, tit. Fishmarket (*London*) (*Westminster*). London, &c. fish-markets.

(A) Information against a Person for preventing the young Salmon from going down a River. — *From Y. C. P.* 90, *et seq.* A.

[Stat. 58 Geo. 3. c. 43. § 3. 6. 10. 13.]

County of ——— } *THE information and complaint of* A. I. *of* ———, *in the said county, one of the conservators appointed for the preservation of the salmon and fish of the salmon kind, and the brood, spawn, and fry thereof, within the rivers* ——— *and* ———, *in the said county, made before me,* J. P. *esquire, one of his majesty's justices of the peace in and for the said county, the* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* ———: *Who says, that within six*

months last past, at a place called ———, *in a part of the said river* ———, *in the parish of* ———, *in the said county, one* A. O., *of* ———, *in the said county,* ———, *did lay down and place, set and erect, certain engines and devices, namely, wooden bars, the said bars not being an inch apart from each other, for the destruction of the brood, spawn, or small fry of salmon in the said river, which said bars so laid down, placed, set up and erected, acted and act as a bank, dam, or hedge, so that the young fry or young salmon were and are thereby prevented from going down from the said river to the sea, contrary to an act passed in the 58th year of the reign of King* George *the third, intituled* An act for preventing the destruction of the breed of salmon, and fish of salmon kind, in the rivers of *England: Whereby he the said* A. O. *has forfeited the sum of* 10*l., to be distributed as the said act directs; and therefore he the said* A. I. *prays that justice may be done in the premises.*

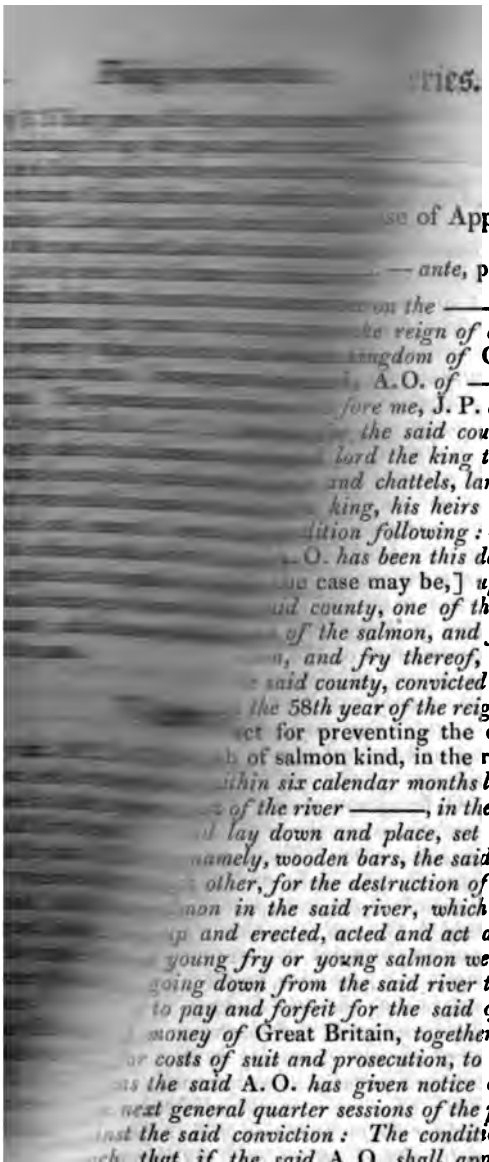
Before me, A. I.
J. P.

B. (B.) Summons thereupon.

To the constable of ———.

County of ———} *WHEREAS information and complaint have been made before me,* J. P. *esquire, one of his majesty's justices of the peace for the said county, by* A. I. *of* ———, *in the said county, one of the conservators appointed for the preservation of the salmon, and fish of the salmon kind, and the brood, spawn, and fry thereof, within the rivers* ——— *and* ———, *in the said county, that within six months last past, at a place called* ———, *in a part of the said river* ———, *in the parish of* ———, *in the said county, one* A. O. *of* ———, *in the said county* ———, *did lay down and place, set and erect, certain engines and devices, namely, wooden bars, the said bars not being an inch apart from each other, for the destruction of the brood, spawn,*

[redacted]



se of Appeal. C.

— *ante*, p. 454.]

on the —— *day of* ——— *the reign of our sovereign lord* ingdom of Great Britain *and* A.O. of ———, *in the said* fore me, J. P. *esquire, one of his* the said county, and acknow- lord the king *the sum of twenty* nd chattels, lands and tenements, king, his heirs and successors, if dition following: —

O. has been this day [or, *was on the* ue case may be,] *upon the complaint* id county, one of the conservators ap- of the salmon, and fish of the salmon n, and fry thereof, within the rivers said county, convicted before me in pur- the 58th year of the reign of King George ct for preventing the destruction of the h of salmon kind, in the rivers of *England*; ithin six calendar months last past, at a place of the river ———, in the parish of ———, lay down and place, set and erect, certain namely, wooden bars, the said bars not being an other, for the destruction of the brood, spawn, mon in the said river, which said bars so laid and erected, acted and act as a bank, dam, or young fry or young salmon were and are thereby going down from the said river to the sea, and was to pay and forfeit for the said offence the sum of money of Great Britain, together with the further r costs of suit and prosecution, to the said A.I.

s the said A.O. has given notice of his intention to next general quarter sessions of the peace for the said nst the said conviction: The condition of this recogni- ch, that if the said A.O. shall appear and try such the said next general quarter sessions of the peace, and ay the costs of such appeal in case judgment and sentence n the hearing thereof be given against him the said A.O. ten days next after the determination thereof, then this re- nce shall be void.

knowledged before me,

J. P.

D. (D) Warrant of Distress thereupon. — *Y.C.P.* 94.

[Stat. 58 Geo. 3. c. 43. § 6. — *ante*, p. 452.]

County of ——— } To the constable of ———.

WHEREAS A.O. *of* ———, *in the said county* ———, *is this day duly convicted before me*, J. P. *esquire, one of his majesty's justices of the peace in and for the said county, upon the oath of* A.W., *a credible witness, for that he the said* A.O., *within six months last past, at a place called* ———, *in a part of the river* ———, *in the parish of* ———, *in the said county, did lay down and place, set and erect, certain engines and devices, namely, wooden bars, the said bars not being an inch apart from each other, for the destruction of the brood, spawn, or small fry of salmon in the said river, which said bars so laid down, placed, set up and erected, acted and act as a bank, dam, or hedge, so that the young fry or young salmon were and are thereby prevented from going down from the said river to the sea, contrary to an act passed in the 58th year of the reign of King* George *the third, intituled* An act for preventing the destruction of the breed of salmon, and fish of salmon-kind, in the rivers of *England: Whereby he the said* A.O. *has forfeited the sum of* ——*l.* [if mitigated say, *but which I have mitigated to* —*l., this being the first offence,* or as the case may be,] *to be distributed as hereinafter is mentioned according to the directions of the said act,* [if the defendant be present say, *and which he the said* A.O. *being now present has not paid down immediately upon such conviction upon the order of me, the said justice, but has refused to pay the same:*] *These are therefore to require you to levy the said penalty of* ——*l., and also the further sum of* ——*l., which I have adjudged for costs, by distress of the goods and chattels of him the said* A.O., *and if within the space of four days*

(E) Commitment thereupon.—*Y. C. P.* 96. E.

[Stat. 58 Geo. 3. c. 43. § 6. — *ante*, p. 452.]

County of ——— { To the constable of ———, in the said county, and to the keeper of the house of correction at ———, in the said county.

WHEREAS A. O. *of* ———, *in the said county* ———, *was on the present day* [that is, if he be present when the conviction takes place, and refuses to pay down the penalty immediately, since he may be instantly committed in that case; or if absent, and a return being made of *nulla bona*, say, *was on the* —— *day of* ——— *instant*,] *duly convicted before me* J. P. *esquire, one of his majesty's justices of the peace in and for the said county, upon the oath of* A. W., *a credible witness, for that he the said* A. O., *within six months last past, at a place called* ———, *in a part of the river* ———, *in the parish of* ———, *in the said county, did lay down and place, set up and erect certain engines and devices, namely, wooden bars, the said bars not being an inch apart from each other, for the destruction of the brood, spawn, or small fry of salmon in the said river, which said bars so laid down, placed, set up and erected, acted and act as a bank, dam, or hedge, so that the young fry or young salmon were and are thereby prevented from going down from the said river to the sea, contrary to an act passed in the 58th year of the reign of King* George *the third, intituled* An act for preventing the destruction of the breed of salmon, and fish of salmon kind, in the rivers of *England: Whereby he the said* A. O. *has forfeited the sum of* ———*l., to be paid, one moiety thereof to* A. I. *of* ———, *in the said county, one of the conservators appointed for the preservation of the salmon, and fish of the salmon kind, and the brood, spawn, and fry thereof within the rivers* —— *and* ———, *in the said county, who informed me of the said offence, and the other moiety of the said penalty, after defraying all costs, charges, and expenses attending the prosecution, and the levying and recovering of the penalty to the overseers of the poor of the said parish of* ———, *where the said offence was committed, for the use of the poor there,* [if the penalty be mitigated, say, *which I have mitigated to* ———*l.*,] [or, as the case may be; and if the offender be present at the conviction, and the warrant of distress issues immediately, the following clause, in Black Letter, is then to be omitted:] And whereas on the said ——— day of ——— in the year aforesaid, I did issue my warrant to the constable of ——— to levy the said penalty by distress of the goods and chattels of him the said A. D., and to distribute the same according as is directed by the said statute: And whereas it duly appears to me, as well on the oath of the said constable of ——— as otherwise, that he the said constable has used his best endeavours to levy the said penalty on the goods and chattels of the said A. D. as aforesaid, but that no sufficient distress can be found whereon to levy the same: *These are therefore to require you the said constable of* ——— *aforesaid, to take and convey the said* A. O. *to the said house of correction of the said county, and deliver him to the said keeper thereof, together with this precept: And you the said keeper are hereby commanded to receive into your custody in the said house of correction the said* A. O., *and him* there safely

to keep at hard labour, and without bail or mainprize for the space of ———, [this must depend upon the offence being the first, second, or third, as stated in the latter part of the *sixth* section of stat. 58 *Geo.* 3. *c.* 43. — *ante*, p. 453.] *unless the said penalty be sooner paid. And for your so doing, this shall be your sufficient warrant. Given under my hand and seal, the* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* ———.

Flight. See Forfeiture.

Forcible Entry and Detainer.

FORCE, in the common law, is most commonly taken in ill part, for unlawful violence; for *maxime paci sunt contraria vis et injuria.* 1 *Inst.* 161. *b.*

It seems that at the common law (1 *Haw. c.* 64. § 1. *et vide Anon.* 3. *Salk.* 169.) a man disseised of any lands or tenements, (if he could not prevail by fair means,) might lawfully regain the possession thereof by force, unless he were put to a necessity of bringing his action, by having neglected to re-enter in due time: And it seems certain that even at this day he who is wrongfully dispossessed of his *goods* may justify the re-taking of them by force from the wrong-doer, if he refuse to re-deliver them; for the violence which happens through the resistance of the wrongful possessor, being originally owing to his own fault, gives him no just cause of complaint, inasmuch as he might have prevented it by doing as he ought. Perhaps, however, as Lord *Kenyon* observed, (*R.* v. *Wilson and others*, 8. *T. R.* 364.) some doubt may arise respecting what Mr. Serjt. *Hawkins* says, that at common law the party may enter

[redacted]

temner of the laws, and disturber of the peace, yet he shall not be liable to pay any damages for it to the plaintiff, whose injustice gave him the provocation in that manner to right himself. 1 *Haw.* 64. § 3.

Yet still forcible entry and detainer are offences at the common law; and the prosecutor, if he please, may proceed in that way: but then the indictment ought to express not only the common technical words *with force and arms*, but also such circumstances as thereby it may appear upon the face of the indictment to be more than a common trespass; for a man cannot be indicted for a bare trespass. *Vide* 3 *Burr.* 1698—1731. 8 *T. R.* 357. *post.*

Indeed there is no doubt but that the offence of forcible entry is indictable at common law, though the statutes give other remedies to the party aggrieved, restitution and damages; and, therefore, in an indictment on the statutes it is necessary to state the interest of the prosecutor. But I do not know, said Lord *Kenyon* C. J., that it has ever been decided that it is necessary to allege a greater degree of force in an indictment at common law for a forcible entry than in an indictment on the statutes. Therefore an indictment at common law, charging the defendants with having "unlawfully and with a strong hand" entered the prosecutor's mill, and certain lands and houses, and expelled him from the possession, is good: for the words, "with a strong hand," mean something more than a common trespass. *Per* Ld. *Kenyon* C. J. *R.* v. *Wilson*, 8 *T. R.* 357.

But the safest and most usual way is to proceed upon the statutes; and, therefore, (after having premised that by stat. 8 *H.* 6. *c.* 9. § 7. *they which keep their possessions with force in any lands and tenements, whereof they or their ancestors, or they whose estate they have in such lands and tenements, have continued their possession in the same by three years or more, be not endangered by force of this statute,*) I shall consider those several statutes, with the interpretation that hath been put upon them, under the following heads: — 1 *Haw. c.* 64. § 13.

8 H.6. c.9. Persons having been in possession three years.

I. *What is a forcible entry.*
II. *What is a forcible detainer.*
III. *How the same are punishable by action at law.*
IV. *How punishable at the general sessions.*
V. *How punishable by one justice.*
VI. *How punishable on a* certiorari.
VII. *How punishable as a riot.*

I. What is a forcible Entry.

A forcible entry or detainer is committed by violently taking or keeping possession of lands and tenements with menaces, force, and arms, and without the authority of law. 4 *Blac. Com.* 148.

By stat. 5 *R.* 2. *c.* 8. None shall make any entry into any lands or tenements (or benefice of holy church, 15 *R.* 2. *c.* 2. or other possessions, 8 *H.* 6. *c.* 9. § 2.) but in cases where entry is given by the law; and in such cases not with strong hand, nor with multitude of people, but only in peaceable and easy manner, on pain of imprisonment and *ransom at the king's will.*

5 R.2. c.8. 15 R.2. c.2. 8 H.6. c.9.

Or other possessions.] It seems clear that no one can come within the danger of these statutes, by a violence offered to another in respect of a *way*, or such like easement, which is no possession; and there seems to be no good authority that an indictment will lie on this case for a *common* or *office*. 1 *Haw. c.* 64. § 34.

Not with strong hand, nor with multitude of people.] It seems certain that if one who pretends a title to lands barely go over them, either with or without a great number of attendants, armed or unarmed, in his way to the church or market, or for such like purpose, without doing any act, which either expressly or impliedly amounts to a claim of such lands, he cannot be said to make an entry thereinto. 1 *Haw. c.* 64. § 20.

Trespass.

But it seemeth that if a person enter into another man's house or ground, either with apparent violence offered to the person of any other, or furnished with weapons, or company, which may offer fear, though it be but to cut or take away another man's corn, grass, or other goods, or to fell or crop wood, or to do any other like trespass, and though he do not put the party out of his possession, yet it seemeth to be a forcible entry. *Dalt. c.* 126. p. 294.

But if the entry were peaceable, and after such entry made, they cut or take away any other man's corn, grass, wood, or other goods, without apparent violence or force; though such acts are counted a disseisin with force, yet they are not punishable as forcible entries. *Dalt. c.* 126. p. 294.

But if he enter peaceably, and there shall by force or violence cut or take away any corn, grass, or wood, or shall forcibly or wrongfully carry away any other goods there being, this seemeth to be a forcible entry punishable by the statutes. *Ibid.*

So also shall those be guilty of a forcible entry, who having an estate in land by a defeasible title continue with force in the possession thereof, after a claim made by one who had a right of entry thereto. 1 *Haw. c.* 64. § 23.

[redacted]

were not maintainable. And by the Court these points were determined; Ld. *Kenyon* C. J., *Grose* J., *Lawrence* J., *Le Blanc* J.

A mere trespass, which is the subject of a civil action, and where the words *vi et armis* are a matter of form, cannot be converted into an indictable offence.

That the offence of forcible entry is indictable at common law.

In an indictment on the statutes, it is necessary to state the interest of the prosecutor.

It is sufficient to state the same degree of force in an indictment at common law, and in an indictment upon the statutes; but there must be stated that degree of force and violence in fact which constitutes the offence.

The words *manu forti* mean something more than a common trespass.

It is not sufficient to charge the defendant with having entered *vi et armis.*

No particular technical words are necessary in such an indictment at common law; all that is required is, that it should appear by the indictment that such force and violence have been used as constitute a public breach of the peace.

And the first and third counts were adjudged good. And at another day Lord *Kenyon* C. J. added, that the court desired that their decision might not be considered as a precedent in other cases to which it did not apply. And that what *Hawkins* says, (*ante,*) that at common law the party may enter with force into that to which he has a legal title, was left untouched by this case, for that here the indictment stated the defendants to have *unlawfully* entered, and therefore the court could not intend that they had any title.

Violence. As to the matter of *violence;* it seems to be agreed that an entry may be forcible, not only in respect of a violence actually done to the person of a man, as by beating him if he refuse to relinquish his possession, but also in respect of any other kind of violence in the manner of the entry, as by breaking open the doors of a house, whether any person be in or not, especially if it be a dwelling-house, and perhaps also by an act of outrage after the entry, as by carrying away the party's goods; but it seems that an entry is not forcible by the bare drawing up a latch, or pulling back the bolt of a door, there being no appearance therein of being done by *strong hand,* or *multitude of people;* and it hath been holden that an entry into a house through a window, or by opening a door with a key, is not forcible. 1 *Haw. c.* 64. § 26.

Terror. In respect of the circumstances of *terror;* it is to be observed, that whenever a man, either by his behaviour or speech at the time of his entry, gives those who are in possession just cause to fear that he will do them some bodily hurt, if they will not give way to him, his entry is esteemed forcible: whether he cause such a terror by carrying with him such an unusual number of attendants, or by arming himself in such a manner as plainly intimates a design; or by actually threatening, to kill, maim, or beat those who shall continue in possession, or by giving out such speeches as plainly imply a purpose of using force, as if one say that he will keep his possession in spite of all men, or the like. 1 *Haw. c.* 64. § 27.

But it seems that no entry shall be judged forcible from any threatening to spoil another's *goods*, or to destroy his cattle, or to do him any other such like damage which is not personal. 1 *Haw. c.* 64. § 28.

However, it is clear that it may be committed by a single person, as well as by twenty. 1 *Haw. c.* 64. § 29.

But nevertheless all those who accompany a man, when he makes a forcible entry, shall be judged to enter with him, whether they actually come upon the lands or not.

II. What is a forcible Detainer.

It seemeth certain that the same circumstances of violence or terror, which will make an entry forcible, will make a detainer forcible also. And a detainer may be forcible, whether the entry were forcible or not. 1 *Haw. c.* 64. § 30.

III. How they are punishable by Action at Law.

H. 6. c. 9. By stat. 8 *H.* 6. *c.* 9. § 6. If any person be put out or disseised of any lands or tenements in forcible manner, or put out peaceably and after holden out with strong hand, the party grieved shall have assize of novel disseisin, or writ of trespass against the disseisor; and if he recover, he shall have treble damages, and the defendant moreover shall make fine and ransom to the king.

The party aggrieved shall have assize, &c.] But this action, being at the suit of the party, and only for the right, is only where the entry of the defendant was not lawful, for if a man entereth with force, where his entry is lawful, he shall not be punished by way of action; but yet he may be indicted upon the statute, for the indictment is for the force and for the king; and he shall make fine to the king, although his right be never so good. *Dalt. c.* 129. p. 303.

Treble damages.] And this he shall recover as well for the

indictment; otherwise he cannot have restitution, because it doth not appear that he needeth it. 1 *Haw. c.* 64. § 37. *et seq.*

But if a man's wife, children, or servants, do continue in the house or upon the land, he is not ousted of his possession; but his cattle being upon the ground, do not preserve his possession. *Dalt. c.* 132. p. 307.

An indictment for forcible entry was quashed, for not setting forth that the party was seised or disseised, or what estate he had in the tenement: for if he had only a term for years, then the entry, must be laid, into the freehold of *A.* in the possession of *B.* We need scarcely observe that this respects an indictment on the statutes. *R.* v. *Griffith*, 3 *Salk.* 169. 3 *Burr.* 1732.

V. How punishable by one Justice.

By stat. 8 *H.* 6. *c.* 9. for a more speedy remedy, the party grieved may complain to any one justice, or to a mayor, sheriff, or bailiff, within their liberties. 8 H.6. c.9.

But although one justice alone may proceed in such cases, yet it may be advisable for him, if the time for viewing the force will suffer it, to take to his assistance one or two more justices.

Concerning which power of one justice it is enacted as follows:

After complaint made to such justice, by the party grieved, of a forcible entry made into lands, tenements, or other possessions, or forcible holding thereof, he shall within a convenient time, at the costs of the party grieved, (without any examining or standing upon the right or title of either party,) *take sufficient power of the county and go to the place where such force is made. Dalt. c.* 44. p. 96. See stats. 15 *R.* 2. *c.* 2. 8 *H.* 6. *c.* 9. § 2.

Complaint ——— *by the party grieved.*] Yet these words do not enforce any necessity of such a complaint; for it is holden that the justice may and ought to proceed, upon any information or knowledge thereof whatsoever, though no complaint at all be brought unto him by any party grieved thereby. *Lamb.* 147.

Power of the county.] All people of the county, as well the sheriff as other, shall be attendant on the justices to arrest the offenders; on pain of imprisonment and fine to the king. 15 R.2. c.2.

If the doors be shut, and they within the house shall deny the justice to enter, it seems he may break open the house, to remove the force. *Dalt. c.* 44. p. 96.

And if after such entry made the justice *shall find such force, he shall cause the offenders to be arrested.*

He shall also take away their weapons and armour, and cause them to be appraised, and after to be answered to the king as forfeited, or the value thereof. *Dalt. c.* 44. p. 96.

Also such justice ought to *make a record* (B) *of such force by him viewed;* which record shall be a sufficient conviction of the offenders, and the parties shall not be allowed to traverse it: And this record, being made out of the sessions by a particular justice, may be kept by him; or he may make it indented, and certify the one part into the K. B., or leave it with the clerk of the peace, and the other part he may keep himself. For this view of the force by the justice, being a judge of record, maketh his record thereof, in the judgment of the law, as strong and effectual, as if the offenders *had confessed the* force before him; and touching

the restraining of traverse, more effectual than if the force had been found by a jury, upon the evidence of others. (This is as to the fine and imprisonment, but not as to restitution.) *Dalt. c.* 44. p. 96.

15 R. 2. c. 2. And the offenders being arrested (as before is said) ***shall be put in the next gaol*** (C), *there to abide convict by the record of the same justice until they have made fine and ransom to the king.*

Shall be put in the next gaol.] It is said that the justice hath no power to commit the offender to gaol, unless he do it upon his own view of the fact, and not upon the jury finding the same afterwards. *Dalt. c.* 44.—1 *Haw. c.* 64. § 8.

And if such offenders being in the house at the coming of the justice shall make no resistance, nor make show of any force, then the justice cannot arrest or remove them at all upon such view. *Dalt. c.* 44.

But howsoever if the force be found afterwards by the enquiry of the jury, the justice may bind the offenders to the peace; and if they be gone, he may make his warrant to take them, and may after send them to the gaol, until they have found sureties for *the peace. Dalt. c.* 44. p. 99.

Observation by Dr. Burn. ***Note.***—Mr. *Dalton* in this place says *good behaviour*, which I have presumed to alter to *the peace*, as deeming it much the safer; and not being sufficiently satisfied concerning the power of a justice of the peace to bind to the good behaviour in the like cases, which power Mr. *Dalton* hath enlarged more than all other authors, without any assistance from the commission of the peace, or any act of parliament, other than had been for above 200 years before.

Until they have made fine.] *R.* v. Sir *Edm. Elwell*, 2 *Str.* 794. 2 Ld. *Raym.* 1514. He was brought up upon a *habeas corpus*, with a return of the cause of his commitment, which was upon a conviction of forcible entry and detainer. And it being moved to discharge him upon exceptions to the commitment, the court



And the fine must be assessed upon every offender severally, and not upon them jointly; and the justice ought to estreat the fine, and to send the estreat into the exchequer, that from thence the sheriff may be commanded to levy it for H. M.'s use. *Dalt.* c. 44. p. 97.

But upon payment of the fine to the sheriff, or upon sureties found (by recognisance) for the payment thereof, it seemeth that the justice may deliver the offenders out of prison again at his pleasure. *Dalt. c.* 44. p. 97.

And so much concerning removing the force: But the party ousted cannot be restored to his possession by the justice's view of the force, nor unless the same force be found by the enquiry of a jury.

Concerning which it is by stat. 8 *H.* 6. *c.* 9. § 3. enacted as follows: And though that the person making such entry be present, or else departed before the coming of the justice, he may notwithstanding in some good town next to the tenements so entered, or in some other convenient place by his discretion (and that though he go not to see the place where the force is) [*Dalt. c.* 44.] have power to enquire by the people of the county, as well of them that make such forcible entry, as of them which hold the same with force. 8 H. 6. c. 9.

§ 4, 5. In order to which, the justice shall make his precept (D) to the sheriff, commanding him in the king's behalf to cause to come before him, sufficient and indifferent persons dwelling next about the lands so entered, to enquire of such entries; whereof every man shall have lands or tenements of 40*s.* a year above reprizes. And the sheriff shall return issues on every of them, at the day of the first precept returnable 20*s.*, and at the second day 40*s.*, and at the third day 100*s.*, and at every day after double. And the sheriff making default shall, on conviction before the same justice or before the judge of assize, forfeit 20*l.*; half to the king, and half to him who shall sue, with costs; and moreover shall make fine and ransom to the king.

Before the same justice.] And the justice may proceed against the sheriff for this default, either by bill at the suit of the party, or by indictment at the suit of the king. *Dalt. c.* 44. p. 99.

And the defendant also, if he be not present, ought to be called to answer for himself; for it is implied by natural justice in the construction of all laws, that no one ought to suffer any prejudice thereby, without having first an opportunity of defending himself. 1 *Haw. c.* 64. § 60.

And it seems to be settled at this day that if the defender tender a *traverse* of the force, the justice ought not to make any restitution till the traverse be tried. *R.* v. *Bengough*, 3 *Salk.* 170.

The defendant may also by stat. 31 *Eliz. c.* 11. plead *three years' possession;* whereby it is enacted, *that no restitution upon an indictment of forcible entry, or holding with force, be made to any person or persons, if the person or persons so indicted hath had the occupation, or hath been in quiet possession by the space of three whole years together next before the day of such indictment so found; and his, her, or their estate or estates therein not ended or determined; which the party indicted shall and may allege for stay of restitution, and restitution to stay until that be tried, if the other will deny* or *traverse the same; and if the same allegation be tried* against the 31 Eliz. c. 11. No restitution to be made if the party indicted hath been three years in quiet possession, and his estate not ended.

31 Eliz. c. 11. Costs.

same person or persons so indicted, then the same person or persons so indicted to pay such costs and damages to the other party as shall be assessed by the judges or justices before whom the same shall be tried; the same costs and damages to be recovered and levied as is usual for costs and damages contained in judgments upon other actions.

It hath been holden that the plea of such possession is good, without showing under what title or of what estate such possession was; because it is not the title, but possession only, which is material in this case. 1 *Haw. c.* 64. § 56.

And it was holden by the court in *Leighton's* case, that if the defendant shall either traverse the entry or the force, or plead that he has been three years in possession, the justice may summon a jury for the trial of such traverse, for it is impossible to determine it upon view; and if the justice have no power to try it, it would be easy for any one to elude the statute by the tender of such a traverse, and therefore by a necessary construction the justice must needs have this power incidental to what is expressly given him. 1 *Haw. c.* 64. § 8.

And this traverse must be tendered in writing, and not by a bare denial of the fact in words; for thereupon a *venire facias* must be awarded, a jury returned, the issue tried, a verdict found, and judgment given, and costs and damages awarded; and there must be a record, which must be in writing, to do all this, and not a verbal plea. *Dalt. c.* 133. p. 309. — 1 *Haw. c.* 64. § 58.

Upon which traverse tendered, the justice shall cause a new jury to be returned by the sheriff, to try the traverse; which may be done the next day, but not the same day. *Dalt. c.* 133. p. 309.

And it seemeth he who tendereth the traverse shall bear all the charges of the trial; and not the king or the party prosecuting. *Id.*

8 H. 6. c. 9.

And by stat. 8 *H.* 6. *c.* 9. § 3. if such forcible entry or detainer be found (E) before such justice, then the said justice shall cause to reseize (F) the lands and tenements so entered or holden, and shall restore the party put out to the full possession of the same

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VI. How punishable on a Certiorari.

Although regularly the justices only who were present at the enquiry, and when the indictment was found, ought to award restitution, yet if the record of the presentment or indictment shall be certified by the justice or justices into the K. B., or the same presentment or indictment be removed or certified thither by *certiorari*, the justices of that court may award a writ of restitution to the sheriff, to restore possession to the party expelled; for the justices of the K. B. have a supreme authority in all cases of the crown. *Dalt. c.* 44. p. 98.

Where a conviction of forcible entry is quashed, the court must award restitution.

Also, where upon a removal of the proceedings into the K. B. the conviction shall be quashed, the court will order restitution to the party injured. As in the case of *R.* v. *Jones*, 1 *Str.* 474. A conviction of forcible entry was quashed for the old exception of *messuage* or *tenement*, by reason of the uncertainty; but the restitution was opposed on an affidavit that the party's title (which was by lease) was expired since the conviction. But the court said, they had no discretionary power in this case, but were bound to award restitution on quashing the conviction.

VII. How punishable as a Riot.

If a forcible entry or detainer shall be made by three persons or more, it is also a riot, and may be proceeded against as such, if no enquiry hath before been made of the force. *Dalt. c.* 44. p. 99.

(A) Indictment for a forcible Entry and Detainer. A.

County of ——— } *THE jurors for our lord the king upon their oath present, that* A. I., *late of the parish of* ———, *in the county aforesaid, gentleman, on the* ——— *day of* ———, *in the* ——— *year of the reign of* ———, *was possessed of a certain messuage, with the appurtenances, situate, lying, and being in* ——— *in the parish aforesaid, in the county aforesaid, for a certain term of years, then and still to come, and unexpired, and being so possessed thereof, one* A. O., *late of* ——— *in the said county, yeoman, afterwards, to wit, the said* ——— *day of* ——— *in the year aforesaid, into the same messuage, with the appurtenances aforesaid in* ——— *aforesaid, in the parish and county aforesaid, with force and arms, and with strong hand* (a), *unlawfully did enter, and the said* A. I. *from the peaceable possession of the said messuage, with the appurtenances aforesaid, then and there, with force and arms, and with strong hand, unlawfully did expel and put out; and the said* A. I. *from the possession thereof so, as aforesaid, with force and arms, and with strong hand, being unlawfully expelled and put out, the said* A. O. *him the said* A. I. *from the aforesaid* ——— *day of* ——— *in the year aforesaid, until the day of the taking this inquisition, from*

(a) These words are not necessary in an indictment for forcible entry at common law. They are added in indictments on the statute, because the statute uses them. *Say.* 225. But enough must appear upon the indictment, to show that it was not a common trespass. *R. v. Wilson and others*, 8 *T. R.* 357. *Ante*, p. 472.

the possession of the said messuage, with the appurtenances aforesaid, with force and arms, and with strong hand, unlawfully and injuriously then and there did keep out, and doth still keep out, to the great damage of the said A. I., *against the peace of our said lord the king, and against the form of the statutes* (*a*) *in that case made and provided.*

Note. — If it is a freehold, then the party must be said to be *seised* thereof in his demesne as of fee; and consequently he must be thereof *disseised*: otherwise it is of a lesser estate, of which he is not properly said to be *seised*, but possessed thereof at the will of the lord, according to the custom of the manor, or the like, and then he must be *expelled, ejected, amoved*, or the like.

B. (B) Record of a forcible Detainer upon view.

Note. — The books upon the office of a justice of the peace generally set forth that the record ought to be in the present tense, and not in the time past (and herewith do accord the adjudged cases in the court of K. B.); yet nevertheless they all exhibit the form of a record in the time past, and not in the present. (1 *Str.* 443.) Therefore I have taken the liberty to alter the same from the record in Ld. *Raymond* of the conviction of Sir *Edm. Elwell* and others; (see *ante*, p. 476.) adding the fine thereunto, for the want of which that conviction was quashed. And I have given the form of a record of a forcible *detainer* rather than a forcible *entry*, because the justice for the most part cannot be supposed to be present at the entry, as not having knowledge thereof till after the entry is made.

Kent, } *BE it remembered, that on the* ——— *of* ———, *in the*
to wit. } ——— *year of the reign of our sovereign lord* George, &c. *at* Beckingham, *in the county of* Kent *aforesaid*, Eliz. Elwell *complaineth to us*, Sir E. Bettenson, *baronet*, P. Burrell, *and* W. Passenger, *esquires, three of the justices of our said lord the king as-*

[redacted]

ng to the form of the statute aforesaid; which complaint and rayer by us the aforesaid justices being heard, we the aforesaid E. B. baronet, P. B. *and* W. P. *esquires, justices aforesaid, to the nessuage aforesaid personally have come, and do then and there nd and see the aforesaid* Ed. E., J. B., *and* D. M., *the aforesaid nessuage, with force and arms, unlawfully, with strong hand and rmed power detaining, against the form of the statute in such ase ade and provided, according as she the same* El. El. *so as aforesid hath unto us complained; therefore it is considered by us, the foresaid justices, that the aforesaid* Edmund Elwell, Joseph Billers, *nd* Daniel Monty, *of the detaining aforesaid with strong hand, y our own proper view then and there as aforesaid had, are con-icted, and every of them is convicted, according to the form of the tatute aforesaid: Whereupon we the justices aforesaid upon every f the aforesaid* Ed. E., J. B., *and* D. M., *do set and impose se-erally a fine of* 10*l. of good and lawful money of* Great Britain, *o be paid by them and every of them severally to our said sovereign ord the king for the said offences; and do cause them, and every f them, then and there to be arrested; and the same* Ed. E., J. B., *nd* D. M. *being convicted, and every of them being convicted upon ur own proper view, of the detaining aforesaid with strong hand s is aforesaid, by us the aforesaid justices are committed, and every f them is committed to the gaol of our said lord the king, at* Maidstone, *in the county of* Kent *aforesaid, being the next gaol to the messuage aforesaid, there to abide respectively, until they shall have paid their several fines respectively to our said lord the king, for their respective offences aforesaid. Concerning which the pre-mises aforesaid, we do make this our record. In witness whereof, we the aforesaid* E. B. *baronet,* P. B. *and* W. P. *esquires, the jus-tices aforesaid, to this record our hands and seals do set at the parish of* B. *aforesaid, in the county of* Kent *aforesaid, on the —— day of —— in the —— year aforesaid of the reign of our said sovereign lord the now king.*

(C) Mittimus for forcible Detainder. C.

County of ——} EDWARD HASSEL *esquire, one of the justices of our sovereign lord the king assigned to keep the peace within the said county of* W., *and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed; to the keeper of his majesty's gaol at —— in the said county, and to his deputy and deputies there, and to every of them, greeting: Whereas upon complaint made unto me this present day by* A. I. —— *in the said county, yeoman, I went immediately to the dwelling-house of the said* A. I. *at —— aforesaid in the said county, and there found* A. O. *late of ——* labourer, B. O. *late of the same, weaver, and* C. O. *late of ——, butcher, forcibly with strong hand and armed power holding the said house, against the peace of our said lord the king, and against the form of the statute in such case made and provided: Therefore I send you, by the bringers hereof, the bodies of the said* A. O., B. O., *and* C. O., *convicted of the said forcible holding, by mine own view, testimony, and record; commanding you in his said majesty's name to receive them into your said gaol, and there safely to keep them, and every of them re-*

spectively, until they shall have respectively paid the several sums of 10*l. of good and lawful money of* Great Britain *to our said sovereign lord the king, which I have set and imposed upon every of them separately, for a fine and ransom for their said trespasses respectively. Herein fail you not, at the peril that may follow thereof. Given at* ——— *aforesaid, in the county aforesaid, under my seal, the* ——— *day of* ——— *in the* ——— *year of the reign of our said sovereign lord King* George *the third.*

Note.— By the forms in all the books, all the offenders stand committed until all have paid, so as that the first shall not be discharged on payment of his own fine, but continue until all the rest have paid likewise; which seems unreasonable, and is not warranted by the statute.

D. (D) Precept to the Sheriff to return a Jury.

County of ———} RICHARD WHINFIELD *esquire, one of the justices of our lord the king assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, to the sheriff of the said county, greeting: On behalf of our said lord the king, I command you that you cause to come before me at* ——— *in the county aforesaid, on the* ——— *day of* ——— *next ensuing, twenty-four sufficient and indifferent men, of the neighbourhood of* ——— *aforesaid, in the county aforesaid, every of whom shall have lands or tenements of* 40*s. yearly at the least, above reprizes, to enquire upon their oaths for our said lord the king, of a certain entry made with a strong hand (as it is said) into the messuage of one* A. I. ——— *aforesaid, in the county aforesaid, against the form of the statute in such case made and provided. And you are to return upon every of the jurors by you in this behalf to be impanelled* 20*s. of issues at the aforesaid day. And have you then there this precept. And this you shall in nowise omit, upon the peril that shall*

(E) The Inquisition, Indictment, or Finding of the Jury. E.

County of ——— } *AN inquisition for our sovereign lord the king, indented and taken at ——— in the said county, the ——— day of ——— in the ——— year of the reign of ——— by the oaths of ———, good and lawful men of the said county, before* J. P. *esquire, one of the justices of our said lord the king, assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the same county committed, who say upon their oaths aforesaid, that* A. I. *of ——— aforesaid, yeoman, long since lawfully and peaceably was seised in his demesne, as of fee* [if it is not freehold, then say *possessed*] *of and in one messuage, with the appurtenances, in ——— aforesaid, in the county aforesaid, and his said possession* [*and seisin*] *so continued until* A. O., *late of ——— yeoman,* B. O. *late of the same, yeoman, and* C. O. *late of the same, yeoman, and other malefactors unknown, the ——— day of ——— now last past, with strong hand and armed power into the messuage aforesaid with the appurtenances aforesaid did enter, and him the said* A. I. *thereof disseised, and with strong hand expelled; and him the said* A. I. *so disseised and expelled from the said messuage with the appurtenances aforesaid, from the said ——— day of ——— until the day of the taking of this inquisition with like strong hand and armed power did keep out, and do yet keep out; to the great disturbance of the peace of our said lord the king, and against the form of the statute in such case made and provided.*

We, whose names are hereunto set, being the jurors aforesaid, do, upon the evidences now produced before us, find the inquisition aforesaid true. A. B.
C. D., *&c.*

(F) Warrant to the Sheriff for Restitution. F.

County of ——— } MARTIN DUNN *esquire, one of the justices of our sovereign lord the king assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, to the sheriff of the said county, greeting: Whereas by an inquisition taken before me the justice aforesaid, at ——— in the county aforesaid, on this present ——— day of ———, in the ——— year of the reign of ———, upon the oaths of ———, and by virtue of the statutes made and provided in cases of forcible entry and detainer, it is found that* A. O. *late of ——— yeoman, and* B. O. *late of ——— yeoman, on the ——— day of ——— now last past, into a certain messuage with the appurtenances of* A. I. *of ——— aforesaid, in the county aforesaid, gentleman, situate, lying, and being at ——— aforesaid, in the county aforesaid, with force and arms did enter, and him the said* A. I. *thereof then with strong hand did disseise and drive out, and him the said* A. I., *thus driven out from the aforesaid messuage, with the appurtenances, from the ——— day of ——— aforesaid, to this present day of the taking of the said inquisition, with strong hand and armed force did keep out, and do yet keep out, as by the inquisition aforesaid more fully appeareth of record: Therefore on the behalf of our said sovereign lord the king,*

I charge and command you, that taking with you the power of the county (if it be needful) you go to the said messuage and other the premises, and the same with the appurtenances you cause to be re-seised, and that you cause the said A. I. *to be restored and put into his full possession thereof, according as he, before the entry aforesaid, was seised, according to the form of the said statutes. And this you shall in nowise omit, on the penalty thereon incumbent. Given under my hand and seal, at* ——— *in the said county, the* ——— *day of* ———, *in the* ——— *year of the reign of* ———.

For any additional forms which may be requisite, see *Wentworth's System of Pleading*, vol. 4. from 148. to 156.

Foreign Service.

[3 J. 1. c. 4. — 59 G. 3. c. 69.]

ENTERING into the service of any foreign state without the king's consent, or contracting with it any engagement which subjects the party to an influence or control inconsistent with the allegiance due to his sovereign, such as receiving a pension from a foreign prince without the king's leave is at common law a high misdemeanor, and punishable accordingly. 1 *East's P.C.* 81. 4 *Blac. Com.* 122.

Indeed, it is considered as so high an offence to prefer the interest of a foreign state to that of our own, that any act is criminal which may but incline a man to do so; as to receive a pension from a foreign prince without the leave of the king. 1 *Haw.* c. 22. § 3. 1 *Russ.* 127.

But with respect to serving, or procuring others to serve foreign

59 G.3. c.69.

§ 2. "If any natural-born subject of H. M., his heirs and successors, without the leave or licence of H. M., his heirs or successors, for that purpose first had and obtained, under the sign-manual of H. M., his heirs or successors, or signified by order in council, or by proclamation of H. M., his heirs or successors, shall take or accept, or shall agree to take or accept any military commission, or shall otherwise enter into the military service as a commissioned or non-commissioned officer, or shall enlist or enter himself to enlist, or shall agree to enlist or to enter himself to serve as a soldier, or to be employed or shall serve in any warlike or military operation in the service of or for or under or in aid of any foreign prince, state, potentate, colony, province, or part of any province or people, or of any person or persons exercising or assuming to exercise the powers of government in or over any foreign country, colony, province, or part of any province or people, either as an officer or soldier, or in any other military capacity; or if any natural-born subject of H. M. shall, without such leave or licence as aforesaid, accept, or agree to take or accept, any commission, warrant, or appointment as an officer, or shall enlist or enter himself, or shall agree to enlist or enter himself, to serve as a sailor or marine, or to be employed, or engaged, or shall serve in and on board any ship or vessel of war, or in and on board any ship or vessel used or fitted out, or equipped or intended to be used for any warlike purpose, in the service of or for or under or in aid of any foreign power, prince, state, potentate, colony, province, or part of any province or people, or of any person or persons exercising or assuming to exercise the powers of government in or over any foreign country, colony, province, or part of any province or people; or if any natural-born subject of H. M. shall, without such leave and licence as aforesaid, engage, contract, or agree to go, or shall go to any foreign state, country, colony, province, or part of any province, or to any place beyond the seas, with an intent or in order to enlist or enter himself to serve, or with intent to serve in any warlike or military operation whatever, whether by land or by sea, in the service of or for or under or in aid of any foreign prince, state, potentate, colony, province, or part of any province or people, or in the service of or for or under or in aid of any person or persons exercising or assuming to exercise the powers of government in or over any foreign country, colony, province, or part of any province or people, either as an officer or a soldier, or in any other military capacity, or as an officer or sailor, or marine, in any such ship or vessel as aforesaid, although no enlisting money or pay or reward shall have been or shall be in any or either of the cases aforesaid actually paid to or received by him, or by any person to or for his use or benefit; or if any person whatever, within the U. K. of *G. B.* and *Ireland*, or in any part of H. M.'s dominions elsewhere, or in any country, colony, settlement, island, or place belonging to or subject to H. M., shall hire, retain, engage, or procure or shall attempt or endeavour to hire, retain, engage, or procure, any person or persons whatever to enlist, or to enter or engage to enlist, or to serve or to be employed in any such service or employment as aforesaid, as an officer, soldier, sailor, or marine, either in land or sea service, for or under or in aid of any foreign prince, state, potentate, colony, province, or part of any province

Subjects enlisting or engaging to enlist or serve in foreign service, military or naval, guilty of misdemeanor.

All persons retaining or procuring others to enlist, guilty of the like offence.

59 G.3. c.69.

or people, or for or under or in aid of any person or persons exercising or assuming to exercise any powers of government as aforesaid, or to go or to agree to go or embark from any part of H. M.'s dominions, for the purpose or with intent to be so enlisted, entered, engaged, or employed as aforesaid, whether any enlisting money, pay, or reward shall have been or shall be actually given or received, or not; in any or either of such cases, every person so offending shall be deemed guilty of a misdemeanor, and upon being convicted thereof, upon any information or indictment, shall be punishable by fine and imprisonment, or either of them, at the discretion of the court before which such offender shall be convicted."

Act not to extend to persons enlisted or serving before the time herein specified.

§ 3. Nothing in this act contained shall extend to render any person liable to any punishment or penalty under this act, who at any time before the 1st of *August*, 1819, within any part of the U. K., or of the islands of *Jersey*, *Guernsey*, *Alderney*, or *Sark*, or at any time before the 1st of *November*, 1819, in any part or place out of the U. K., or of the said islands, shall have taken or accepted, or agreed to take or accept any military commission, or shall otherwise have enlisted into any military service as a commissioned or non-commissioned officer, or shall have enlisted, or entered himself to enlist, or shall have agreed to enlist, or to enter himself to serve as a soldier, or shall have served, or having so served shall, after the said 1st of *August*, 1819, continue to serve in any warlike or military operation, either as an officer or soldier, or in any other military capacity, or shall have accepted, or agreed to take or accept any commission, warrant, or appointment as an officer, or shall have enlisted or entered himself to serve, or shall have served, or having so served shall continue to serve as a sailor or marine, or shall have been employed or engaged, or shall have served, or having so served shall, after the said 1st of *August*, continue to serve in and on board any ship or vessel of war, used or fitted out, or equipped or intended for any warlike purpose; or shall have engaged, or contracted, or agreed to go, or shall have



be in such state and condition, and no other, and shall be liable to such fines, penalties, forfeitures, and disabilities, and none other, as such person was liable to before the passing of this act, and as such person would have been in, and liable to, in case this act and the said recited acts by this act repealed had not been passed. 59 G.3. c.69.

§ 4. It shall be lawful for any justice of the peace residing at or near to any port or place within *G. B.* and *Ireland*, where any offence made punishable by this act as a misdemeanor shall be committed, on information on oath of any such offence, to issue his warrant for the apprehension of the offender, and to cause him to be brought before such justice, or any justice of the peace; and it shall be lawful for the justice of the peace before whom such offender shall be brought, to examine into the nature of the offence upon oath, and to commit such person to gaol, there to remain until delivered by due course of law, unless such offender shall give bail, to the satisfaction of the said justice, to appear and answer to any information or indictment to be preferred against him, according to law, for the said offence; and all such offences which shall be committed within *England*, shall be proceeded and tried in H. M.'s court of K. B. at *Westminster*, and the venue in such case laid at *Westminster*, or at the assizes or session of oyer and terminer and gaol delivery, or at any quarter or general sessions of the peace in and for the county or place where such offence was committed; and that all such offences which shall be committed within *Ireland* shall and may be prosecuted in H. M.'s court of K. B. at *Dublin*, and the venue be laid at *Dublin*, or at any assizes or session of oyer and terminer and gaol delivery, or at any quarter or general sessions of the peace in and for the county or place where such offence was committed; and all such offences as shall be committed in *Scotland* shall and may be prosecuted in the court of justiciary in *Scotland*, or any other court competent to try criminal offences committed within the county, shire, or stewartry within which such offence was committed; and where any offence made punishable by this act as a misdemeanor shall be committed out of the said U. K., it shall be lawful for any justice of the peace residing near to the port or place where such offence shall be committed, on information on oath of any such offence, to issue his warrant for the apprehension of the offender, and to cause him to be brought before such justice, or any other justice of the peace for such place; and it shall be lawful for the justice of the peace before whom such offender shall be brought, to examine into the nature of the offence on oath, and to commit such person to gaol, there to remain till delivered by due course of law, or otherwise to hold such offender to bail to answer for such offence in the superior court, competent to try, and having jurisdiction to try criminal offences committed in such port or place; and all such offences committed at any place out of the said U. K. shall and may be prosecuted and tried in any superior court of H. M.'s dominions competent to try, and having jurisdiction to try criminal offences committed at the place where such offence shall be committed.

Justices to issue warrants for the apprehension of offenders.

Where offences shall be tried.

§ 5. "In case any ship or vessel in any port or place within H. M.'s dominions, shall have on board any such person or persons who shall have been enlisted or entered to serve, or shall have engaged or agreed or been procured to enlist or enter or serve, or

Vessels with persons on board engaged in foreign service, may be de

59 G. 3. c. 69. tained at any part in H. M.'s dominions.

who shall be departing from H. M.'s dominions for the purpose and with the intent of enlisting or entering to serve, or to be employed, or of serving or being engaged or employed in the service of any foreign prince, state, or potentate, colony, province, or part of any province or people, or of any person or persons exercising or assuming to exercise the powers of government in or over any foreign colony, province, or part of any province or people, either as an officer, soldier, sailor, or marine, contrary to the provisions of this act, it shall be lawful for any of the principal officers of H. M.'s customs where any such officers of the customs shall be, and in any part of H. M.'s dominions in which there are no officers of H. M.'s customs, for any governor or persons having the chief civil command, upon information on oath given before them respectively, which oath they are hereby respectively authorised and empowered to administer, that such person or persons as aforesaid is or are on board such ship or vessel, to detain and prevent any such ship or vessel, or to cause such ship or vessel to be detained and prevented from proceeding to sea on her voyage with such persons as aforesaid on board; provided nevertheless, that no principal officer, governor, or person, shall act as aforesaid, upon such information upon oath as aforesaid, unless the party so informing shall not only have deposed in such information that the person or persons on board such ship or vessel hath or have been enlisted or entered to serve, or hath or have engaged or agreed or been procured to enlist or enter or serve, or is or are departing as aforesaid, for this purpose and with the intent of enlisting or entering to serve or to be employed, or of serving, or being engaged or employed in such service as aforesaid, but shall also have set forth in such information upon oath the facts or circumstances upon which he forms his knowledge or belief enabling him to give such information upon oath; and that all and every person and persons convicted of wilfully false-swearing in any such information upon oath shall be deemed guilty of and suffer the penalties on persons convicted of wilful and corrupt perjury."

Oath to be made as to facts and circumstances.

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bail, by recognisance before one of H. M.'s justices of the peace, for the payment of such penalty or penalties. 59 G.3. c.69.

§ 7. "If any person, within any part of the U. K., or in any part of H. M.'s dominions beyond the seas, shall without the leave and licence of H. M. for that purpose first had and obtained as aforesaid, equip, furnish, fit out, or arm, or attempt or endeavour to equip, furnish, fit out, or arm, or procure to be equipped, furnished, fitted out, or armed, or shall knowingly aid, assist, or be concerned in the equipping, furnishing, fitting out, or arming of any ship or vessel, with intent or in order that such ship or vessel shall be employed in the service of any foreign prince, state, or potentate, or of any foreign colony, province, or part of any province or people, or of any person or persons exercising or assuming to exercise any powers of government in or over any foreign state, colony, province, or part of any province or people, as a transport or store-ship, or with intent to cruise or commit hostilities against any prince, state, or potentate, or against the subjects or citizens of any prince, state, or potentate, or against the persons exercising or assuming to exercise the powers of government in any colony, province, or part of any province or country, or against the inhabitants of any foreign colony, province, or part of any province or country, with whom H. M. shall not then be at war; or shall, within the U. K., or any of H. M.'s dominions, or in any settlement, colony, territory, island, or place belonging or subject to H. M., issue or deliver any commission for any ship or vessel, to the intent that such ship or vessel shall be employed as aforesaid, every such person so offending shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, upon any information or indictment, be punished by fine or imprisonment, or either of them, at the discretion of the court in which such offender shall be convicted; and every such ship or vessel, with the tackle, apparel, and furniture, together with all the materials, arms, ammunition and stores, which may belong to or be on board of any such ship or vessel, shall be forfeited; and it shall be lawful for any officer of H.M.'s customs or excise, or any officer of H.M.'s navy, who is by law empowered to make seizures, for any forfeiture incurred under any of the laws of customs or excise, or the laws of trade and navigation, to seize such ships and vessels aforesaid, and in such places and in such manner in which the officers of H.M.'s customs or excise, and the officers of H.M.'s navy are empowered respectively to make seizures under the laws of customs and excise, or under the laws of trade and navigation; and that every such ship and vessel, with the tackle, apparel, and furniture, together with all the materials, arms, ammunition, and stores which may belong to or be on board of such ship or vessel, may be prosecuted and condemned in the like manner, and in such courts as ships or vessels may be prosecuted and condemned for any breach of the laws made for the protection of the revenues of customs and excise, or of the laws of trade and navigation."

Penalty on persons fitting out armed vessels to aid in military operations with any foreign powers without licence;

or issuing commissions for ships.

§ 8. "If any person in any part of *G. B.* and *Ireland*, or in any part of H. M.'s dominions beyond the seas, without the leave and licence of H. M. for that purpose first had and obtained as aforesaid, shall, by adding to the number of the guns of such vessel, or by changing those on board for other guns, or by the addition of any equipment for war, increase or augment, or procure to be

Penalty for aiding the warlike equipment of vessels of foreign states, &c.

59 G.3. c.69. increased or augmented, or shall be knowingly concerned in increasing or augmenting the warlike force of any ship or vessel of war, or cruiser, or other armed vessel, which at the time of her arrival in any part of the U. K., or any of H. M.'s dominions, was a ship of war, cruiser, or armed vessel in the service of any foreign prince, state, or potentate, or of any person or persons exercising or assuming to exercise any powers of government in or over any colony, province, or part of any province or people belonging to the subjects of any such prince, state or potentate, or to the inhabitants of any colony, province, or part of any province or country under the control of any person or persons so exercising or assuming to exercise the powers of government, every such person so offending shall be deemed guilty of a misdemeanor, and shall upon being convicted thereof, upon any information or indictment, be punished by fine and imprisonment, or either of them, at the discretion of the court before which such offender shall be convicted."

Offences committed out of the kingdom may be tried at Westminster.

§ 9. Offences punishable by this act, committed out of the U. K., may be tried in the court of K. B. at *Westminster*, and the venue laid at *Westminster*, in the county of *Middlesex*.

How penalties shall be sued for and recovered.

§ 10. Any penalty inflicted by this act may be sued for and recovered by action of debt, bill, plaint, or information, in any of H. M.'s courts of record at *Westminster* or *Dublin*, or in the court of exchequer, or in the court of session in *Scotland*, in the name of H. M.'s attorney general for *England* or *Ireland*, or H. M.'s advocate for *Scotland* respectively, or in the name of any person or persons whatsoever; wherein no essoign, protection, privilege, wager of law, nor more than one imparlance shall be allowed; and in every action or suit the person against whom judgment shall be given for any penalty under this act shall pay double costs; and every such suit may be brought at any time within twelve months after the offence committed, and not afterwards; and one moiety shall go to H. M., and the other moiety to the use of such person or persons as shall first sue for the same.

Double costs.

Limitation of actions.

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in his wars by personal service for the defence of the realm against a rebellion or invasion. 1 *Haw. c.* 22. § 2. — 1 *Russ.* 130.

Forestalling, ingrossing, and regrating.

[5 & 6 Ed. 6. c. 14. — 12 G. 3. c. 71.]

Derivation.

FORESTALLING (*forestællan*, or *forestallan*) in the English Saxon, signifieth properly to *market before the public*, or to *prevent the public market;* and metaphorically, to *intercept* in general; and seemeth derived from *fore*, which is the same as *before*, and *stalle*, a standing place or department; from whence sprang the ancient word *stallage*, which signifieth money paid for erecting a stall or stand, for the selling of goods in a fair or market.

Ingrossing is from *in*, and *gross*, great or whole.

And *regrating*, from *re*, again, and the French *grater*, to *grate* or scrape; and signifieth the scraping or dressing of cloth or other goods, in order for selling the same again.

All the statutes against those offences are repealed.

There have been several statutes made from time to time against these offences in general, and also especially with respect to particular species of goods according to their several circumstances; almost all of which from stat. 5 & 6 *Ed.* 6. *c.* 14., and others downwards made for enforcing the same are repealed by stat. 12 *G.* 3. *c.* 71. But these offences still continue punishable upon indictment at the common law by fine and imprisonment.

But the offences remain punishable at common law.

And at the common law all endeavours whatsoever to enhance the common price of any merchandise, and all kinds of practices which have an apparent tendency thereto, whether by spreading false rumours, or by buying things in a market before the accustomed hour, or by buying and selling again the same thing in the same market, or by any other such like devices, are highly criminal, and punishable by fine and imprisonment. 1 *Haw. c.* 80. § 1. 1 *Russ.* 255.

By the common law a merchant bringing victuals into the realm may sell the same in gross; but no person can lawfully buy within the realm any merchandise in gross, and sell the same in gross again, without being liable to be indicted for the same. 3 *Inst.* 196.

The bare ingrossing of a whole commodity, with an intent to sell it at an unreasonable price, is an offence indictable at common law, whether any part thereof be sold by the ingrosser or not. 1 *Haw. c.* 80. § 3.

And so jealous is the common law of all practices of this kind, that it will not suffer corn to be sold in the sheaf; perhaps for this reason, because by such means, the market is in effect forestalled. 1 *Haw. c.* 80. § 4.

By stat. 5 & 6 *Ed.* 6. *c.* 14. these offences were particularly described; which statute, though now repealed as aforesaid, yet may be of use as containing a parliamentary exposition of the respective terms denoting the several particular offences; and is to the following effect:—

5&6 E.6. c.14.

Forestaller.

Whosoever shall buy or cause to be bought any merchandise, victual, or any other thing whatsoever, coming by land or by water, toward any market or fair to be sold in the same, or coming towards any city, port, haven, creek, or road, from any parts beyond the sea to be sold; or make any bargain, contract, or promise, for the having or buying the same, or any part thereof, so coming as is aforesaid, before the said merchandise, victuals, or other things shall be in the market, fair, city, port, haven, creek, or road, ready to be sold; or shall make any motion by word, letter, message, or otherwise, to any person for the enhancing of the price, or dearer selling of any thing above mentioned; or else dissuade, move, or stir any person coming to the market or fair, to abstain or forbear to bring or convey any of the things above rehearsed to any market, fair, city, port, haven, creek, or road to be sold as aforesaid ——— shall be deemed a forestaller.

Ingrosser.

§ 3. *Whosoever shall ingross, or get into his hands by buying, contracting, or promise-taking, other than by demise, grant, or lease of land or tithe, any corn growing in the fields, or any other corn or grain, butter, cheese, fish, or other dead victuals whatsoever, to the intent to sell the same again, shall be deemed an unlawful* ingrosser.

Regrator.

§ 2. *And whosoever shall by any means regrate, obtain, or get into his hands or possession, in a fair or market, any corn, wine, fish, butter, cheese, candles, tallow, sheep, lambs, calves, swine, pigs, geese, capons, hens, chickens, pigeons, conies, or other dead victual whatsoever, that shall be brought to any fair or market to be sold, and shall sell the same again in any fair or market holden or kept in the same place, or in any other fair or market within four miles thereof, shall be deemed a* regrator. (*a*)

5&6E.6. c.14.

It has been observed that notwithstanding the repeal of stat. 5 & 6 *E.* 6. the offences of forestalling, ingrossing, and regrating, remain punishable at common law; and indeed lamentable would be the plight of the public and of the state, were there no remedy

[redacted]

being brought to market, and to resell at an unreasonable profit, and thereby greatly to enhance the price.

5. Unlawfully ingrossing by buying large quantities, with like intent.

6. Ingrossing hops then growing, by forehand bargains, with like intent.

To forestall any commodity which is become a common victual and necessary of life, or is used as an ingredient in the making or preservation of any victual, though not formerly used or considered as such, is an offence at common law. *R.* v. *Waddington*, 1 *East*, 143.

It is well observed by Mr. Chitty, that at the present day it would probably be holden that no offence is committed unless there is an intent to raise the price of provisions by the conduct of the party, for the mere transfer of a purchase in the market where it is made, the buying articles before they arrive at a public market, or the purchasing of a large quantity of a particular article, can scarcely be regarded as in themselves necessarily injurious to the community, and as such, indictable offences: a party buying and selling again, does not necessarily increase the price of the commodity to the consumer, for the division of labour or occupations will, in general, occasion the commodity to be sold cheaper to the consumer; see *Smith's Wealth of Nations*, book 4. c. 5., and Index, title *Labour;* and many cases may occur in which a most laudable motive may exist for buying large quantities of the same commodity. See the arguments, &c. in 14 *East*, 406. 15 *East*, 511. Indeed, in the case of the *King* v. *Rusby*, *H. T.* 40 *G.* 3., the court were equally divided on the question, whether regrating is an indictable offence at common law, and though the defendant was convicted, no judgment was ever passed upon him. 2 *Crim. Law*, 528. (n) 537. (n)

R. v. Rusby.

An indictment for ingrossing "a great quantity" of fish, geese, and ducks, was holden bad; for the quantity of each ought to be specified. *R.* v. *Gilbert*, 1 *East*, 583.

Indictment must state the quantity.

Forests. See **Game.**

Forfeiture.

The forfeitures for particular offences may be found under their respective titles: here it is treated of forfeitures in general.

I. *Of Forfeiture of Lands and Goods.*
[17 Ed. 2. c. 16. — 54 G. 3. c. 145.]

II. *Of Loss of Dower.*
[1 Ed. 6. c. 12. — 5 & 6 Ed. 6. c. 11.]

III. *Of Corruption of Blood.*

I. Of Forfeiture of Lands and Goods.

Forfeiture of lands.

IT seems agreed that by the common law all lands of inheritance, whereof the offender was seised in his own right, and also all rights of entry to lands in the hands of a wrong-doer, are forfeited to the king, by an attainder of high treason, and to the lord of whom they are immediately holden by an attainder of petit treason or felony. 2 *Haw. c.* 49. § 1.

But it seems clear that the lord cannot enter into the lands holden of him, upon an escheat for petit treason or felony, without a special grant, till it appear by due process that the king hath had his prerogative of the year, day, and waste. *Id.* § 3.

17 Ed. 2. c. 16.

Concerning which year, day, and waste, it is enacted by the 17 *Ed.* 2. *c.* 16. that the king shall have the goods of all felons attainted, and fugitives, wheresoever they be found. And if they have freehold, it shall be forthwith taken into the king's hands, and the king shall have all profits of the same by one year and one day; and the land shall be wasted and destroyed in the houses, woods, and gardens, and in all manner of things belonging to the same land. And after the king hath had the year, day, and waste, the land shall be restored to the chief lord of the fee, unless that he fine before with the king for the year, day, and waste.

54 G. 3. c. 145.

By stat. 54 *G.* 3. *c.* 145. No attainder, except for high treason, petit treason, or murder, or for abetting the same, shall extend to the disinheriting of any heir, &c. *Vide* tit. Attainder, Vol. I.

Forfeiture of goods.

As to forfeiture of goods, it seems agreed that all things whatsoever which are comprehended under the notion of a personal estate, whether they be in action or possession, which the party hath or is entitled to in his own right, and not as executor or administrator to another, are liable to such forfeiture, in the following cases:

(1) Upon a conviction of treason or felony. 2 *Haw. c.* 49.

he be burnt in the hand; yet thereby he becomes capable of purchasing other goods. 2 *Hale*, 388, 389.

But on burning in the hand, he ought to be immediately restored to the possession of his lands. 2 *Hale*, 389.

(8) If a person be found *felo de se*, he shall forfeit his goods and chattels, but not his lands. 3 *Inst.* 54. — 5 *Rep.* 109.

Forfeiture upon outlawry.

Upon outlawry in treason or felony, the offender shall lose and forfeit as much as if he had appeared, and judgment had been given against him, as long as the outlawry is in force. *Wood's Inst. b.* 4. *c.* 5.

And those that tarry till the exigent in treason, felony, or petit larceny, forfeit their goods, though they render themselves to justice, and are acquitted; for it was a flight in law. *Id.*

Forfeiture in se defendendo.

But where the killing a man in his own defence is in the law no felony, there is no forfeiture unless he fled; for that is a distinct forfeiture, although the party be not guilty of the fact. 1 *Hale*, 493.

To what time the forfeiture shall relate.

It seems agreed that the forfeiture, upon an attainder, either of treason or felony, shall have relation to the time of the offence, for the avoiding of all subsequent alienations of the *land*, but to the time of the conviction or flight found only, as to *chattels*; unless the party were killed in flying or resisting, in which case it is said that the forfeiture of the chattels shall relate to the time of the offence. 2 *Haw. c.* 49. § 30.

What is to be done with the felon's goods before forfeiture.

But though the goods of an offender be not forfeited till the conviction or flight found by inquest, yet whether they may be seized upon the offence committed, hath been controverted; concerning which Lord *Hale* saith thus: —

It seemeth clear that at the common law, if a man had committed felony or treason, or though possibly he had committed none, yet if he had been indicted, the sheriff, coroner, or other officer could not seize and carry away the goods of the offender or party accused.

Again, he could not in that case have removed the goods out of the custody of the offender or party accused, and deliver them over to the constables, or to the *villata*, to answer for them.

But if the party were indicted, the sheriff or other officer might make a simple seizure of them only to inventory and appraise them, and leave them to the custody of the servants or bailiff of the party indicted, in case he would give security against their being embezzled, or in default thereof he might deliver them to the constable or vill to be answerable for them, but yet so that the party accused and his family have sufficient out of them for their livelihood and maintenance.

And possibly the same law was, though he were not indicted, but *de facto* had committed a felony, but with this difference, if he had been indicted, this kind of seizure might have been made, whether he committed the felony or not.

But in case there were no indictment, then it is at the peril of him that seizeth, if he committed not the felony.

II. Of Loss of Dower.

Forfeiture of dower in felony.

Albeit a person shall be attainted of felony, yet his wife shall not forfeit her dower. 1 *Ed.* 6. *c.* 12. § 17.

In treason.

But on his attainder of treason she shall forfeit her dower. 5 & 6 *Ed.* 6. *c.* 11. § 13.

But in some kinds of treason, (particularly with regard to the coin,) there is a special saving of the wife's dower by statute.

III. Of Corruption of Blood.

Corruption of blood.

It is agreed that by an attainder of treason or felony, the blood is so far stained or corrupted, that the party loses all the nobility or gentility he might have had before, and becomes ignoble. 2 *Haw. c.* 49. § 47.

Also, that he can neither inherit as heir to an ancestor, nor have an heir. *Id.* § 48.

But the king's pardon, though it doth not restore the blood, yet as to issue born after, hath the effect of a restitution. 1 *Hale*, 358.

But restitution of blood, in its true nature and extent, can only be by act of parliament. 1 *Hale*, 358.—2 *Haw. c.* 49. § 51.

See stat. 54 *G.* 3. *c.* 145., tit. Attainder, Vol. I.

Forgery. (a)

I. *Of Forgery at Common Law.*
II. ——— *by Statute.*

I. Of Forgery at Common Law.

FORGERY is an offence at common law, and an offence also by statute.

Forgery at the common law is an offence in falsely and fraudulently making or altering any manner of record, or any other in-



inasmuch as the chief end of the institution of the office of these justices was for the preservation of the peace against personal wrongs and open violence, and the word *trespass* in its most proper and natural sense is taken for such kind of injuries, it shall be understood in that sense only in the commission, or at the most to extend to such other offences only as have a direct and immediate tendency to cause such breaches of the peace, as libels, and such like, which on this account have been adjudged indictable before justices of the peace. And this was confirmed in the case of *Micah Gibbs*, 1 *East*, 173. where it was determined that the sessions have no jurisdiction over the offence of forgery at common law, nor can they take cognisance of it as a cheat.

But Mr. *Barlow* says nevertheless, that it seemeth clear that a justice of the peace may take an information thereof, bind over the informers, examine the offender, certify his examination to the proper judges, and commit him to prison in order to abide his trial. *Barl.* 244.

II. Of Forgery by Statute.

By stat. 25 *E.* 3. *st.* 5. *c.* 2. To counterfeit the king's great or privy seal is treason. And also by stat. 1 *M. st.* 2. *c.* 6. falsely to forge or counterfeit the queen's sign-manual, privy-signet, or privy-seal, is treason; and finally by stat. 7 *Ann. c.* 21. § 9. to counterfeit the seals used and continued in *Scotland*, according to the 29th article of the union, is treason.

25 E. 3. st. 5. c. 2.
1 M. st. 2. c. 6.
7 A. c. 21. § 9.

The famous statute 5 *El. c.* 14. § 2. which, by an example worthy to be imitated, doth (in order to prevent confusion) repeal all former statutes against forgery, enacts, that if any person or persons shall of his or their own imagination, or by false conspiracy or fraud with others, wittingly, subtilly, and falsely forge or make, or subtilly cause or wittingly assent to be forged or made, any false *deed*, *charter*, or *writing sealed*, *court-roll*, or the will of any person in writing, to the intent that the state of freehold or inheritance of any person or persons of, in, or to any lands, tenements, or hereditaments, freehold or copyhold, or the right, title, or interest of any person or persons of, in, or to the same, or any of them, shall or may be molested, troubled, defeated, recovered, or charged; or shall *pronounce*, *publish*, *or show forth in evidence* any such false and forged deed, charter, writing, court-roll, or will, as true, knowing the same to be false and forged as aforesaid, to the same intent; (except lawyers or attornies for their clients not being privy to the forgery, § 15.) and shall be thereof convicted either upon action or actions of forger of false deeds, to be founded upon this statute at the suit of the party grieved, or otherwise according to law; he shall pay unto the party grieved his double costs and damages, to be assessed in that court where such conviction shall be, and also shall be set upon the pillory in some open market-town or other open place, and there to have both his ears cut off, and also his nostrils to be slit and cut, and seared with a hot iron so as they may remain for a perpetual mark of his falsehood, and shall forfeit to the queen the whole issues and profits of his lands and tenements during his life, and also shall suffer perpetual imprisonment during his life," &c. *Vide Pult.* 45, 46.

5 Eliz. c. 14. Forging deeds, charters, writings sealed, court-rolls, or wills, with intent to molest the freehold or inheritance of any.

Eliz. c. 14.

§ 10. Gives power to justices of oyer and terminer, and of assize, to determine the offences.

Under this act the judges of K. B. have jurisdiction, but not justices of the peace in sessions. 1 *Hale*, 687. — *Cro. Eliz.* 87. — 2 *East's P. C.* 919.

The above stat. of *Elizabeth* has now nearly fallen into disuse since the passing of stat. 2 *G.* 2. *c.* 25. which extends to all deeds and wills, upon which the prosecution is easier, and the punishment capital in the first instance. 2 *East's P. C.* 919.

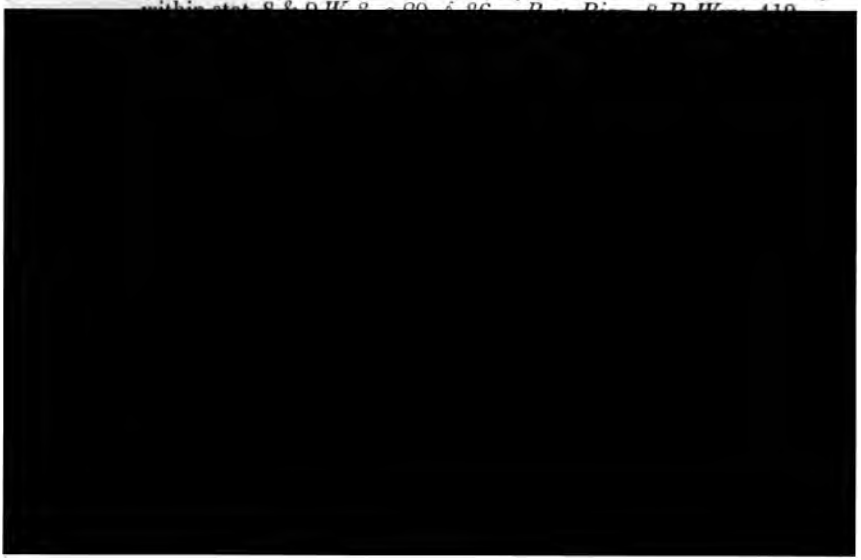
Forge or make.] Making a second deed, and antedating it, with intent to make it take place of a former deed, is forgery within this statute. 3 *Inst.* 167.

What a false making or altering.

The very making, with a fraudulent intent and without lawful authority, of any instrument which at common law or by statute is the subject of forgery, is of itself a sufficient completion of the offence even before publication, and of consequence before any actual injury sustained; for though publication be the medium by which the intent is usually made manifest, yet it may be proved as plainly by other evidence. And by the statute law (*a*) the publication, with knowledge of the fact, is for the most part made a substantive offence. 2 *East's P. C.* 855.

Making a fraudulent insertion, alteration, or erasure, in any material part of a true instrument, although in a letter only, and even if it be afterwards executed by another person he not knowing of the deceit; or the fraudulent application of a true signature to a false instrument for which it was not intended, or *vice versâ*; are as much forgeries as if the whole instrument had been fabricated; for any such alteration gives it a new operation. As by altering the date of a bill of exchange after acceptance, whereby the payment was accelerated. 2 *East's P. C.* 855.—*Master* v. *Miller*, 4 *T. R.* 320.

Expunging an indorsement on a bank-note with a certain liquor (lemon-juice) unknown to the jury, was holden to be a *rasing*



introduced into the place of the word *one*, the word *ten* at each part of the paper; by this means the note, which was a note for one pound, became a note importing to be a promissory note for ten *pound*, having in the body the word *ten pound*, and at the corner £ *ten*. It was then proved that on the same day, he, being a butcher, paid it to a farmer *Edward Hensby* for some sheep he had purchased from him. Upon this proof it was objected by the prisoner's counsel, that upon this indictment he could not be convicted, as this was not altering or adding to, or forging a promissory note for money, it being when altered not a promissory note to pay ten *pounds* but ten *pound* in the singular number, which was ungrammatical, uncertain, and nonsense. The learned judge left it to the jury to consider whether they believed the evidence given, and that the note was altered by the prisoner, and negotiated by him as a note for ten pounds, for the purpose of defrauding, either the bankers, or *Edward Hensby* to whom it was paid, of that sum. The prisoner was found guilty, and the question, in *Easter* term 1806, submitted to the judges, who (*absente* Ld. *Ellenborough* C. J.) held the conviction right. Post's case.

And, upon the principle that the false making of any part of a genuine note, which may give it a greater currency, is forgery; it was holden, in a modern case, that where a note of country bankers was made payable at their house in the country, or at their banker's in *London*, and the *London* banker had failed, it was forgery to alter the name of such *London* banker to the name of another *London* banker, with whom the country bankers had made their notes payable subsequently to the failure. The judges held that the act done by the prisoner was a false making, in a circumstance material to the value of the note, and its facility of transfer, by making it payable at a *solvent* instead of an *insolvent* house.—*N. B.* The alteration was effected by pasting a slip of paper, bearing the words "*Ramsbottom & Co.*" over the words "*Bloxam & Co.*" in the same manner as the prosecutors had altered their re-issuable notes after the failure of the first *London* bankers, *Bloxam & Co.* *R.* v. *Treble*, 2 *Taunt.* 328.—2 *Leach*, 1040. MS. C.

In *Kinder's case*, *Nottingham Sum. Ass.* 1800, *cor. Rooke* J. it appeared that the prisoner procured a deed to be forged from *J. M.* and his son, conveying an estate for life to *Mary Kinder*, and that after the death of one of the supposed grantors, he procured the forged deed to be altered by enlarging the grantee's estate to a fee: he was convicted of forging and uttering it in the state to which it was so altered; and it was holden by all the judges that the conviction was proper; for it was no less a forgery after than before such alteration. *MS. C. C. R.*—2 *East's P. C.* 856. S. C.

But it is not forgery to pass for the person whose indorsement is on the bill, and thereby to obtain credit in the name of another; for in such a case it is not a false making. It is however an indictable offence within stat. 30 *G.* 2. *c.* 24. for using a false pretence. *Hervey's case*, *O. B. Jan.* 1782, 2 *East's P. C.* 856.

It is forgery however for a person, having the same name as the payee of a bill of exchange, and knowing that he is not the real person in whose favour it was drawn, to endorse it with intent to defraud, &c. *Mead* v. *Young*, 4 *T. R.* 29.

So making a false instrument, which is the subject of forgery, though in the name of a non-existing person, is as much a forgery as if it had been made in the name of one who is known to exist and to whom credit was due. *Anne Lewis's case, Fost.* 116.; and *G. Wilks's case, Bodmin*, 1767.—2 *East's P. C.* 957, 958.; and *Taft's case*, 2 *East's P. C.* 959.

Or subtilly cause, or willingly assent.] To *cause*, is to procure or counsel one to forge; to *assent*, is to give his assent or agreement afterwards to the procurement or counsel of another; to *consent*, is to agree at the time of the procurement of counsel, and such is in law a procurer. 3 *Inst.* 169.

But Ld. *Hale* says, that an *assent* after the fact is committed makes not the party assenting guilty, or principal in the forging; but it must be a precedent or concomitant assent. 1 *Hale*, 684.

False deed, charter, or writing.] It seems to be no way material, whether a forged instrument be made in such a manner as, were it true, it would be of validity or not. 1 *Haw. c.* 70. § 7. But Mr. *East*, 2 *P. C.* 948., is of opinion that this must be understood where the false instrument bears on the face of it the semblance of that for which it is counterfeited, and is not illegal in its very frame. Upon this ground it hath been adjudged that the forgery of a protection in the name of a member of parliament, who in truth at the time was not a member, is as much a crime as if he were. *R. v. Deakins*, 1 *Sid.* 142.

So it is a capital offence within the *stat.* 2 *G.* 2. *c.* 25. to forge the last will of a person *who is living*, and yet such an instrument never could operate as a will in contemplation of law, during the lifetime of the supposed testator. *R.* v. *Coogan*, 2 *East's P. C.* 948. 1 *Leach*, 448.

Forgery of a bill of exchange on unstamped paper.

So forgery may be committed of a bill of exchange on unstamped paper. *Hawkeswood's case*, 1 *Leach*, 257. 2 *East's P. C.* 955. *Hawkeswood* being indicted for forgery of a bill of exchange, it was objected that not being stamped it was no bill of exchange by the *stat.* 22 *G.* 3. *c.* 33. and prior acts; and that this was an objec-

Therefore, where *T. Wall* was convicted upon an indictment for forging and knowingly uttering a will of land of one *J. S.*, attested by only two witnesses, and it did not appear in evidence what estate the supposed testator had in the land so devised, or of what nature it was; it was objected that *non constat* but that the land was freehold, and therefore the will void by the express words of the statute of frauds (29 *Car.* 2. *c.* 3. § 5.) for want of the attestation of three witnesses. The judges on a conference in *Easter* term 1800, held the conviction wrong; for as it was not shown to be a chattel interest, it was to be presumed to be freehold. *Wall's case, Worcester Sp. Ass.* 1800, *cor. Thomson* B., 2 *East's P. C.* 953.

A conviction for forging a will of land, attested by only two witnesses, holden wrong.

So in *R.* v. *Moffatt* (*O. B. Jan.* 1787) it was decided by all the judges that forgery of a bill of exchange, as such, cannot be committed when it is drawn for more than 20*s.* and less than 5*l. without mentioning the place of abode of the payee, and having a subscribing witness thereto;* for want of which circumstances it is declared by stat. 17 *G.* 3. *c.* 30. § 1., that such a note is absolutely void. *Moffatt's case,* 2 *East's P. C.* 954. — 1 *Leach,* 431. *Bayl.* 489.

17 G. 3. c. 30.

Writing sealed.] These are large words; and the making of a false customary of a manor in writing under seal, containing divers false customs, to the disherison of the lord of the manor, and that the same had been allowed and permitted by the lord of the manor, which was also false, was resolved to be within these words *a false writing sealed.* 3 *Inst.* 169.

Sealed.] It is required that the deed, charter, or writing must be sealed, that is, have some impression upon the wax; for wax without an impression, is not a seal. *Id.*

Court roll, or will.] Here are two writings which need not be sealed, because they may take effect without any seal, for that they be no deeds; and no writing can have the force of a deed without a seal. 3 *Inst.* 170.

Will.] If any person which writeth the will of a sick man inserteth a clause therein concerning the devise of lands, without any direction of the devisor, this is forgery, although he did not forge the whole will. 3 *Inst.* 170.

To the intent that the estate of freehold or inheritance of any person, of any lands, tenements, or hereditaments, freehold or copyhold, or the right, title, or interest of any person in the same, may be molested, troubled, defeated, recovered, or charged]. *R.* v. *Japhet Crooke,* 2 *Str.* 901. *Fitzg.* 57. 261. 2 *East's P. C.* 921. The defendant was convicted on an indictment which stated that *Garbut* and his wife were seised in fee of certain messuages, lands, and tenements called *Jawick,* in the parish of *Clacton,* in *Essex,* and that the defendant, intending to molest them and their interest in the premises, forged a lease and release as from *Garbut* and his wife, whereby they are supposed for a valuable consideration to convey to him "all that park called *Jawick Park,* in the parish of *Clackton* in *Essex,* containing eight miles in circumference, with all the deer, woods, &c. thereto belonging." It was moved in arrest of judgment that the premises supposed to be conveyed were so materially different from those which were really the estate of *Garbut* and his wife, that it was impossible this conveyance ever could molest or disturb them. But the court held, that it was not necessary that there should be a charge or a possibility

5 Eliz. c. 14.

On an indictment for forgery within 5 Eliz. it is sufficient if the party may be molested in his possession, though he be not evicted; and a variance of Jawick Park for Jawick in the forged deed is not material.

of a charge, and that it was sufficient if it were done with that intent, and the jury have found that it was done with intent to molest *Garbut* and his wife in the possession of their lands. Accordingly judgment was given for the king; and the defendant had sentence to undergo the punishment appointed by the act for forging a deed, and the same was executed upon him at *Charing Cross*.

Pronounce or publish.] That is, when one by words or writing pronounceth or publisheth the deed to any other as true. 3 *Inst.* 171.

Knowing the same to be forged.] This knowledge may come by two means; either of his own knowledge, or of the relation of another; for if another tell him it is forged, and he publish it afterwards as true, and it prove to be forged indeed, he is in danger of this statute.

But Ld. *Hale* says, that though such a relation may be an evidence of fact to prove his knowledge, yet it is not conclusive; for perchance there might be circumstances of fact that might make the person relating it, or his relation, not credible; so that the *knowing* must be upon the whole matter left to the jury, upon the circumstances of the case. 1 *Hale*, 685.

Upon an indictment for uttering a forged bank-note, knowing it to be forged, evidence may be given of other forged notes having been uttered by the prisoner, in order to show his guilty know-

In *R.* v. *Wylie and another*, at the *O. B. Apr.* 14. 1804. The prisoners were indicted for disposing of and putting away a forged bank-note for 1*l.*, knowing the same to be forged. In order to show the knowledge of the prisoners that the note was forged, evidence was offered that the prisoners had passed other forged notes to other persons: And to this evidence the counsel for the prisoners objected, as being inadmissible; because they said, upon indictments for burglary or robbery, previous offences were not allowed to be given in evidence to prove the *quô animo*; nor upon an indictment for uttering bad money; and they said that the prisoners ought to have had notice of the several utterings intended to have been proved against them. Lord *Ellenborough* C. J. said,

tent for us to go into and receive evidence of another offence, and of the demeanor of the prisoners on other occasions, from which knowledge may be inferred."—*Heath* J. agreed, and said he remembered a case where several persons were tried for a conspiracy to raise wages, and evidence was received of circumstances amounting to substantive felonies, such circumstances being material to the point in issue.—*Thomson* B. agreed, and said that as to uttering of bad money, the prosecutor could give evidence of another uttering on the same day, in order to prove the knowledge. The evidence was received, and the prisoners were found guilty. *Wylie's case*, 1 *N.R.* 92.—2 *Leach*, 983. R. v. Wylie.

Edward Ball was tried before *Heath* J. at *Lewes*, *Sum. As.* 1807, on an indictment, charging him in the first count with forging a bank of *England* promissory note for the payment of 5*l.*, with an intent to defraud the governor and company of the bank of *England*, and on another count for uttering the same, &c. The prisoner uttered the note in question on the 11*th of June*, 1807, and there was circumstantial evidence of his having actually forged it, which might induce an intelligent jury to find him guilty on the first count. The note was forged with a camel-hair pencil. The company's notes are struck off a copper-plate, and so are most of the forged notes that have been circulated. Evidence was then offered and admitted, that the prisoner had uttered another note forged in the same manner by the same hand and with the same materials on the 20th of *March*, 1807, and that two ten-pound notes, and thirteen one-pound notes of the same fabrication had been found on the files of the company, on the back of which there was the prisoner's hand-writing, which was evidence of their having been in his possession, but it did not appear when the company received them. The prisoner was found guilty, but sentence was respited for the purpose of taking the opinion of the judges as to the admissibility of this evidence. On the 14th *November*, 1807, all the judges (except *Rooke* J.) met, and the majority were of opinion that the evidence was admissible, subject to observation as to its weight, which would be more or less considerable according to the number of the other notes, the distance of time at which they were put off, and the situation in life of the prisoner, as to make it more or less probable that so many notes should pass through his hands in the course of business. *Ball's case*, *R. & R. C. C. R.* 132. 1 *Campb.* 324. S. C.

Upon an indictment for uttering a forged bank-note, knowing it to be forged, evidence is admissible of the prisoner having some time before uttered another forged note of the same manufacture, and also of a number of others having been in circulation with the prisoner's hand-writing on the back.

In another case, where the prisoner was indicted for forging a promissory note (not a note of the bank of *England*) and also for uttering it, evidence was given that, in the same pocket-book belonging to the prisoner in which the forged note was found, on which the indictment proceeded, there was also found another promissory note, for 100*l.* payable to the prisoner's order, appearing to be signed by one *Wm. Gapper*, which *Wm. Gapper* proved not to be his hand-writing, and that he never owed the prisoner 100*l.* This evidence of *Gapper*'s note was objected to by the prisoner's counsel, but admitted; and on reference to the judges, a majority were of opinion that *Gapper* was not a competent witness. The prisoner was pardoned. *Crocker's case*, *Salisbury Sum. Ass.* 1805. *cor. Le Blanc* J., *R. R. C. C. R.* 97. 2 *N. R.* 87. 2 *Russ.* 1515.

The prisoner forged the name of J. C. to a power of attorney for selling stock, which was standing in the joint names of the prisoner and J. C. The forgery having been discovered, the stock was not sold: Held, that J. C. was a competent witness to prove the forgery.

R. v. *Wait*, *H.* 1823. 1 *Bing. R.* 121. The prisoner was convicted before *Bayley* J. and *Garrow* B., at the *O. B. January Sess.* 1823, of uttering a forged power of attorney for selling stock, which was standing in the joint names of the prisoner and *John Cox*: the power imported to be executed by the prisoner and *John Cox*, and the attestation imported that it was executed in the presence of the subscribing witnesses, by the prisoner and *John Cox*. The subscribing witnesses proved that it was not executed by *Cox* in their presence; that *Cox*'s signature was not upon the power when they attested it; and that they believed the words in the attestation "and *John Cox*," were added after they attested. The bank-ledger was produced, according to which the stock was still standing in the prisoner's and *Cox*'s names: and the party to whom the power was granted, proved, that when he applied to sell under the power he was not permitted. *Cox* was then called as a witness to prove the forgery and other points: he was objected to, but *Bayley* J. and *Garrow* B. thought him competent, and he was examined. He produced the probate of a will of *James Fitchew*, by which he gave some money to the prisoner and *Edward Naish*, in trust for *Elizabeth Fitchew*, for life; remainder to *Stephen* and *John Cox*. He proved that *Naish* refused to act; that the trust-money was invested in the joint names of the prisoner and himself; that he never gave any power to sell; that the signature in his name was a forgery; and that as soon as he knew of it, *viz.* in three days after the date, he wrote, and sent the following letter to the accountant-general of the bank.

"Sir, "*Wrington*, *20th September*, 1822.

"Having received information that the bank is in possession of a power of attorney, purporting to be executed by Mr. *John Wait* and myself, for the sale of stock in the 3 *per cent.* consols, standing in our names; if such be the fact, I beg distinctly to say, I have not executed any such power, nor was I privy to its execution. I should have sent to you express, but I

manors, lands, tenements, or hereditaments, not being copyhold, or any annuity in fee-simple, fee-tail, or for term of life, lives, or years, or any obligation, or bill obligatory, or any acquittance, release, or other discharge of any debt, account, action, suit, demand, or other thing personal; or shall pronounce, publish, or give the same in evidence as true, knowing the same to be false and forged, he shall, on conviction, in like manner pay to the party double costs and damages, and be set on the pillory (*a*), and have one of his ears cut off, and be imprisoned for a year. 5 Eliz. c. 14.

Obligation, or bill obligatory.] The forgery of a deed of gift of mere personal chattels is not within this statute. 1 *Haw. c.* 70. § 21.

§ 6. And *if, after verdict, the plaintiff shall release the judgment or execution, or suffer a discontinuance, it shall only discharge his own costs and damages, and not the other punishment.*

§ 7, 8. *If any person shall, after conviction, offend again in any of the ways above mentioned, he shall be guilty of felony, without benefit of clergy.*

Thus stood the matter upon the statute of 5 *El.* Afterwards, by many subsequent statutes (several of which were occasional only, and adapted to the particular juncture and circumstances of the time in which they were made, but which are referred to and enforced by the subsequent statutes on the same subject), divers other forgeries were made felony without benefit of clergy for the first offence; and others had other punishments assigned them.

But these, and the judicial decisions to which they have given rise, are now become far too numerous to be inserted in a work of this description. And it is the less necessary, as neither the quarter sessions nor justices of the peace have jurisdiction over this offence; and the able treatises now extant upon the criminal law, give the fullest information upon this subject; to which, therefore, it is deemed sufficient to refer.

Form of Commitment for Felony in uttering a forged Bank Note, under Stats. 15 *G.*2. *c.* 13. § 11. and 45 *G.* 3. *c.* 89. § 1.

County of *Warwick*, to wit. } Sir G. C. *baronet, one of the justices of our lord the king, assigned to keep the peace within the said county. To the constable of* ——— *in the said county, and to the keeper of the common gaol at* Warwick, *in the said county.*

THESE are to command you the said constable, in his said majesty's name, forthwith to convey and deliver into the custody of the said keeper of the said common gaol the body of A. O., *charged this day before me the said justice, upon the oaths of* A. I., A. W., *and others, with feloniously uttering, publishing, disposing of, and putting away at* Birmingham, *in the said county, on the* ——— *day of* ——— *now last past, a certain false, forged, and counterfeited bank-note, purporting to be a note of the governor and company of the bank of* England, *for the payment of one pound, he the said* A. O. *at the time of uttering, &c.* [or as the case may be] *well knowing the same to be false, forged, and counterfeited, with intent to defraud the said governor and company, contrary to the form of the statutes in such case made and provided.*

(*a*) *Vide* stat. *56 G.*3. *c.* 138. tit. Pillory.

And you the said keeper are hereby required to receive the said A. O. *into your custody in the said common gaol, and him there safely keep, until he shall be from thence discharged by due course of law. Hereof fail you not. Given under my hand and seal, the* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* ———.

Fornication. See **Lewdness.**

Frame-work Knitters.

For the punishment of frame-breaking, see stat. 4 *G.* 4. *c.* 46. § 2. Vol. V. *tit.* **Stocking Frames.**

[6 G. 3. c. 29.]

6 G. 3. c. 29. Pieces to be marked.

BY stat. 6 *G.* 3. *c.* 29. § 1. all frame-work, knitted pieces, and stockings made of thread, cotton, worsted, or yarn, or any mixture of all or any of the said materials, or of any other materials, except such as shall be made of silk only, which shall contain three or more threads, shall be marked with the same number of ilet-holes, and no more, as there are threads contained in each piece or pair; and such ilet-holes shall be made distinctly in one direct line, or in the same course, and shall not exceed the distance of three-inches from the two extreme ilet-holes; and no such ilet-holes shall be made or placed within the distance of four inches of any letter, figure, mark, or other device, which shall be put or woven in any such goods or manufactures; and all such ilet-holes



person by whom he was employed, in that case he shall not be subject to any penalty. 6 G.3. c.29.

§ 7. And if any frame-work knitter, hosier, or other person, shall sell or expose to sale any of the said goods, not duly and truly marked as aforesaid, he shall forfeit the same, and also 5*l.* for each piece or pair. Selling unmarked goods.

§ 8. Provided, that if the person prosecuted for selling or exposing the same to sale shall discover the vender or seller thereof, so as he may be convicted, such person shall be discharged from any penalty or forfeiture inflicted by this act.

§ 9. One justice where the offence shall be committed (not being a frame-work knitter, hosier, or proprietor of frames) may convict the offender, on the oath of one witness; and if on such conviction the penalties or forfeitures shall not be forthwith paid, the said justice shall issue his warrant to levy the same by distress, rendering the overplus, if any; and if no goods, or not sufficient, can be found, such justice shall, on oath thereof made to him by the person who shall have the execution of the warrant, commit the offender to the common gaol of the place where the offence shall be committed for any time not exceeding three months, unless the penalties and forfeitures shall be sooner paid and satisfied: all which penalties and forfeitures shall be applied half to the informer and half to the poor. Penalties how to be recovered.

§ 10. Persons aggrieved may appeal to the sessions, giving ten days' notice in writing of his intent to the justice, and within two days after notice entering into recognisance before a justice with two sureties to try the appeal at such sessions; and the justices there, on due proof of such notice and recognisance, shall hear and determine the same, and award costs to either party, as they shall think fit: and their determination shall be final, binding, and conclusive, to all intents and purposes. Appeal.

§ 12. Provided, that nothing herein shall extend to abridge or take away any rights or privileges of the master, wardens, and assistants of the company of frame-work knitters.

Fraud. See Cheat.

Friendly Societies. (*a*)

[10 G. 4. c. 56.]

BY stat. 10 *G.* 4. *c.* 56. intituled *An act to consolidate and amend the laws relating to friendly societies*, § 1. Reciting that it was expedient to amend the laws relating to friendly societies, and to consolidate the same in one act, and to make other provisions respecting friendly societies; it is enacted, that the former statutes therein mentioned, shall be and are thereby repealed: Provided that such repeal shall not invalidate or affect 10 G.4. c.56. Former acts repealed.

(*a*) See Vol. I. tit. Banks for Savings.

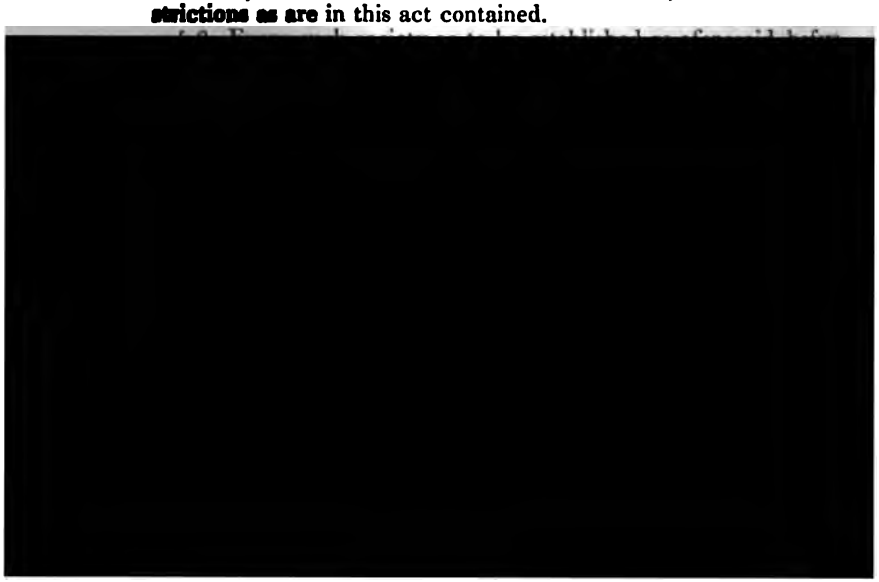
10 G.4. c.56.

any thing done before the passing of this act in pursuance of any such former act.

Any number of persons may form themselves into a society, and raise a fund for their mutual benefit, and make rules, &c.

§ 2. Reciting that certain friendly societies have been established in *G. B.* and *Ireland*, for raising, by voluntary subscription of the members thereof, separate funds for the mutual relief and maintenance of the said members in sickness, old age, and infirmity; and it is expedient to give protection to such societies and the funds thereby established, and to afford encouragement to other persons to form the like societies; it is enacted, that it shall and may be lawful to and for any number of persons in *G. B.* and *Ireland* to form themselves into and to establish a society for the purpose of raising from time to time, by subscriptions of the several members of every such society, or by voluntary contributions, or by donations, a stock or fund for the mutual relief and maintenance of all and every the members thereof, their wives or children, or other relations, in sickness, infancy, advanced age, widowhood, or any other natural state or contingency whereof the occurrence is susceptible of calculation by way of average; and to and for the several members of each society from time to time to assemble together, and to make, ordain, and constitute such proper and wholesome rules for the better government and guidance of the same as to the major part of the members of such society so assembled together shall seem meet, so as such rules shall not be repugnant to the laws of this realm, nor any of the express provisions or regulations of this act; and to impose and inflict such reasonable fines and forfeitures upon the several members of any such society who shall offend against such rules as shall be just and necessary for duly enforcing the same, to be respectively paid to such uses, for the benefit of such society, as such society by such rules shall direct; and also from time to time to alter and amend such rules as occasion shall require, or to annul and repeal the same, and to make new rules in lieu thereof, under such restrictions as are in this act contained.

Power to alter and amend rules.



such penalty or forfeiture as such society shall by any rule impose and inflict for such offence.

Rules of the society to be submitted to a barrister, or other person, by whom they are to be certified;

§ 4. A transcript, fairly written on paper or parchment, of all such rules, signed by three members, and countersigned by the clerk or secretary, with all convenient speed after the same shall be made, altered, or amended, and so from time to time after every making, altering, or amending thereof, shall be submitted, in *England* and *Wales* and *Berwick-upon-Tweed*, to the barrister at law for the time being appointed to certify the rules of saving banks, and in *Scotland* to the lord advocate or any of his deputies, and in *Ireland* to such barrister as may be appointed by H. M.'s attorney-general in *Ireland*, for the purpose of ascertaining whether the said rules of such society, or alteration or amendment thereof, are in conformity to law and to the provisions of this act; and that the said barrister or advocate shall give a certificate thereof, or point out in what part or parts they are repugnant thereto; and that the fee payable to such barrister or advocate for perusing the rules or alterations or amendments of the rules, of each respective society, and giving such certificate as aforesaid, shall not at any one time exceed the sum of 1*l.* 1*s.*, which, together with the expense of conveying the rules to and from the said barrister or advocate, shall be defrayed by each society respectively; and such transcript, when certified by the said barrister or advocate, shall be deposited with the clerk of the peace for the county wherein such society shall be formed, and by him laid before the justices for such county at the general quarter sessions, or adjournment thereof, next after the time when such transcript shall have been so certified and returned as aforesaid; and the justices then and there present are hereby authorised and required to allow and confirm the same; and such transcript shall be filed by such clerk of the peace with the rolls of the sessions of the peace in his custody; and a certificate of the enrolment thereof shall, within fourteen days after the end of the said sessions or adjournment thereof, be signed by such clerk of the peace on a duplicate copy to be provided by and returned to such society, without fee or reward: Provided that nothing herein contained shall be construed to require any rules, alterations or amendments thereof, to be submitted to such barrister or advocate, if the same, when deposited with the clerk of the peace, are accompanied with an affidavit of being a copy of any of the rules, alterations, or amendments of any other society which shall have been already enrolled under the provisions of this act in the same county.

and deposited with the clerk of the peace.

Rules, when certified, to be confirmed by justices at sessions, and a duplicate certified by clerk of the peace.

When not necessary to submit rules to barrister.

Manner of proceeding in case barrister shall refuse to certify.

§ 5. Provided that in case any such barrister or advocate shall refuse to certify all or any of the rules so to be submitted for his perusal and examination, it shall then be lawful for any such society to submit the same to the court of quarter sessions, together with the reasons assigned by the said barrister or advocate, in writing, for any such rejection or disapproval of any one or more such rules; and that the justices at their said quarter sessions shall and may, if they think fit, confirm and allow the same, notwithstanding any such rejection or disapproval by any such barrister or advocate.

Rules not to be allowed unless the justices are satisfied with the tables.

§ 6. Provided that no rules of any society hereafter to be formed shall be allowed, unless it shall appear to the justices to whom the same are tendered that the tables of the payment to be made by

10 G. 4. c. 56.

the members, and of the benefits to be received by them, may be adopted with safety to all parties concerned. (*a*)

No society entitled to the benefit of this act, unless their rules have been confirmed.

§ 7. No such society as aforesaid shall have the benefit of this act, unless all the rules for the management thereof shall be entered in a book to be kept by an officer of such society appointed for that purpose, and which book shall be open at all seasonable times for the inspection of the members of such society, and unless all such rules shall be fairly transcribed, and such transcript deposited with the clerk of the peace for the county wherein such society shall be established as aforesaid; but nevertheless nothing contained herein shall extend to prevent any alteration in or amendment of any such rules so entered and deposited and filed as aforesaid, or repealing or annulling the same, or any of them, in the whole or in part, or making any new rules for the management of such society, in such manner as by the rules of such society shall from time to time be provided; but such new rules, or such alterations in or amendments of former rules, or any order annulling or repealing any former rules in the whole or in part, shall not be in force until the same respectively shall be entered in such book as aforesaid, and certified, when necessary, by such barrister or advocate as aforesaid, and until a transcript thereof shall be deposited with such clerk of the peace as aforesaid, who shall file and certify the same as aforesaid; and no such rule, or alteration in or amendment of any former rule, shall be binding or have any force or effect until the same shall have been confirmed by such justices, and filed as aforesaid.

Rules, when entered and deposited, to be binding on members and depositors.

§ 8. All rules from time to time made and in force for the management of such society as aforesaid, and duly entered in such book as aforesaid, and confirmed by the justices as aforesaid, shall be binding on the several members and officers of such society, and the several contributors thereto, and their representatives, all of whom shall be deemed and taken to have full notice thereof by such entry and contribution as aforesaid; and the entry of such rules in such book as aforesaid, or the transcript thereof deposited

Copy of transcript to be re-

[redacted]

next before such general meeting for the purpose of such alteration or repeal, unless a committee of such members shall have been nominated for that purpose at a general meeting of the members of such society convened in manner aforesaid, in which case such committee shall have the like power to make such alterations or repeal, and unless such alterations or repeal shall be made with the concurrence and approbation of three-fourths of the members of such society then and there present, or by the like proportion of such committee as aforesaid, if any shall have been nominated for that purpose. 10 G.4. c.56.

Rules shall specify place of meeting and duties of officers.

§ 10. The rules of every society formed under the authority of this act shall specify the place or places at which it is intended such society shall hold its meetings, and shall contain provisions with respect to the powers and duties of the members at large, and of such committees or officers as may be appointed for the management of the affairs of such society: Provided, that it shall be lawful for any such society to alter their place or places of meeting whenever they may consider it necessary, upon giving notice thereof in writing to the clerk of the peace for the county within which such society shall be held, the said notice to be given within seven days before or after such removal, and signed by the secretary or other principal officer, and also by three or more of the members of the said society; and provided that the place or places at which such society intend to hold their meetings shall be situate within the county in which the rules of the said society are enrolled.

Societies may alter place of meeting.

Society may appoint officers.

§ 11. Every such society shall and may from time to time, at any of their usual meetings, or by their committee, if any such shall be appointed for that society, elect and appoint such person into the office of steward, president, warden, treasurer, or trustee of such society, as they shall think proper, and also shall and may from time to time elect and appoint such clerks and other officers as shall be deemed necessary to carry into execution the purposes of such society, for such space of time and for such purposes as shall be fixed and established by the rules of such society, and from time to time to elect and appoint others in the room of those who shall vacate or die; and such treasurer, trustee, and all and every other officer or other person whatever who shall be appointed to any office in anywise touching or concerning the receipt, management, or expenditure of any sum of money collected for the purpose of any such society, before he, she, or they shall be admitted to take upon him, her, or them the execution of any such office or trust, (if required so to do by the rules of such society to which such officer shall belong,) shall become bound in a bond, according to the form prescribed in the schedule to this act annexed, with two sufficient sureties, for the just and faithful execution of such office or trust, and for rendering a just and true account according to the rules of such society, and in all matters lawful to pay obedience to the same, in such penal sum of money as by the major part of such society at any such meeting as aforesaid shall be thought expedient, and to the satisfaction of such society; and that every such bond to be given by or on the behalf of such treasurer or trustee, or of any other person appointed to any other office or trust, shall be given to the clerk of the peace of the county where such society shall be established, for the time being, without fee or *reward*; and in case of forfeiture it shall be

Securities to be given for offices of trust, if required.

Treasurer or trustees to give bond to the clerk of the peace.

10 G. 4. c. 56.

lawful to sue upon such bond in the name of the clerk of the peace for the time being, for the use of the said society, fully indemnifying and saving harmless such clerk of the peace from all costs and charges in respect of such suit: Provided that such bond shall have in *Scotland* the same force and effect as a bond in the form in use in *Scotland* containing a clause of registration.

Appointment of committees.

§ 12. Every such society shall and may from time to time elect and appoint any number of the members of such society to be a committee, the number thereof to be declared in the rules of every such society, and shall and may delegate to such committee all or any of the powers given by this act to be executed, who, being so delegated, shall continue to act as such committee, for and during such time as they shall be appointed, for such society, for general purposes, the powers of such committee being first declared in and by the rules of such society, confirmed by the justices of the peace at their sessions, and filed in the manner herein-before directed; and in all cases where a committee shall be appointed for any particular purpose, the powers delegated to such committee shall be reduced into writing and entered into a book by the secretary or clerk of such society, and a majority of the members of such committee shall at all times be necessary to concur in any act of such committee; and such committee shall, in all things delegated to them, act for and in the name of such society; and all acts and orders of such committee, under the powers delegated to them, shall have the like force and effect as the acts and orders of such society at any general meeting thereof could or might have had in pursuance of this act: Provided, that the transactions of such committee shall be entered in a book belonging to such society, and shall be from time to time and at all times subject and liable to the review, allowance, or disallowance and control of such society, in such manner and form as such society shall, by their general rules, confirmed by the justices and filed as aforesaid, have directed and appointed, or shall in like manner direct and appoint.

Powers of standing committees to be declared in the rules of the society, and of particular ones entered in a book.

Committee controllable by society.



by such treasurer or trustee, and shall be applied to and for the use of such society, according to the rules thereof. 10 G. 4. c. 56.

§ 14. Every person who shall have or receive any part of the monies, effects, or funds of or belonging to any such society, or shall in any manner have been or shall be entrusted with the disposal, management, or custody thereof, or of any securities, books, papers, or property relating to the same, his or her executors, administrators, and assigns respectively, shall, upon demand made, or notice in writing given or left at the last or usual place of residence of such persons, in pursuance of any order of such society, or committee to be appointed as aforesaid, for that purpose, give in his or her account at the usual meeting of such society, or to such committee thereof as aforesaid, to be examined and allowed or disallowed by such society or committee thereof, and shall, on the like demand or notice, pay over all the monies remaining in his or her hands, and assign and transfer or deliver all securities and effects, books, papers, and property, taken or standing in his or her name as aforesaid, or being in his or her hands or custody, to the treasurer or trustee for the time being, or to such other person as such society or committee thereof shall appoint; and in case of any neglect or refusal to deliver such account, or to pay over such monies, or to assign, transfer, or deliver such securities and effects, books, papers, and property, in manner aforesaid, it shall and may be lawful to and for every such society, in the name of the treasurer or trustee or other principal officer thereof, as the case may be, to exhibit a petition in the court of Exchequer in *England* or *Ireland*, or in the court of session in *Scotland*, or the courts of great sessions in *Wales* respectively, who shall and may proceed thereupon in a summary way, and make such order therein, upon hearing all parties concerned, as to such court in their discretion shall seem just, which order shall be final and conclusive; and all assignments, sales, and transfers made in pursuance of such order, shall be good and effectual in law to all intents and purposes whatsoever.

Treasurers, &c. to render accounts, and pay over balances, &c.

and in case of neglect, application may be made to the court of exchequer, &c.

§ 15. When and so often as any person seised or possessed of any lands, tenements, or hereditaments, or other property, or any estate or interest therein, as a trustee of any such society, shall be out of the jurisdiction of or not amenable to the process of the court of exchequer in *England* or *Ireland*, or the court of session in *Scotland*, or of the court of great sessions in *Wales*, or shall be idiot, lunatic, or of unsound mind, or it shall be unknown or uncertain whether he or she be living or dead, or such person shall refuse to convey or otherwise assure such lands, tenements, hereditaments, or property, or estate or interest, to the person duly nominated as trustee of such society in their stead, either alone or together with any continuing trustee, as occasion shall require, then and in every or any such case it shall be lawful for the judges of the said courts respectively to appoint such person, as to such court shall seem meet, on behalf and in the name of the person seised or possessed as aforesaid, to convey, surrender, release, assign, or otherwise assure the said lands, tenements, hereditaments, or property, or estate, or interest, to such trustee so duly nominated as aforesaid; and every such conveyance, release, surrender, assignment, or assurance, shall be as valid and effectual to all intents and purposes as if the person being out of the jurisdiction or not amenable to the process of the said courts, or not

Where trustees &c. are out of jurisdiction of court, or it be uncertain whether they are alive, or they refuse to convey, &c. court of exchequer may appoint a person to convey.

10 G. 4. c. 56.

known to be alive, or having refused, or as if the person being idiot, lunatic, or of unsound mind, had been, at the time of the execution thereof, of sane mind, memory, and understanding, and had by himself or herself executed the same.

When trustees shall be absent, &c. courts may order stock to be transferred and dividends paid.

§ 16. When and as often as it shall happen that all and every person in whose name any part of the several stocks, annuities, and funds transferable or which hereafter shall be made transferable at the bank of *England*, or in the books of the governor and company of the bank of *England*, is, are, or shall be standing as a trustee of any such society, shall be absent, out of the jurisdiction, or not amenable to the process of the said court of exchequer in *Eugland* or *Ireland*, or the court of session in *Scotland*, or the courts of great session in *Wales*, or shall be a bankrupt, insolvent, or lunatic, or it shall be uncertain or unknown whether such trustee is living or dead, that then and in such case it shall and may be lawful to and for the judges of the said courts respectively to order and direct that the accountant-general, or the secretary or deputy-secretary, or other proper officer for the time being of the governor and company of the bank of *England*, do transfer in the book of the said company such stock, annuities, or funds standing as aforesaid, to and into the name of such person as such society may appoint, and also pay over to such person as aforesaid the dividends of such stock, annuities, or funds; and when and as often as it shall happen that one or more only, and not all or both of such trustees as aforesaid, shall be so absent, or not amenable to such process as aforesaid, or a bankrupt, insolvent, or lunatic, or it be uncertain or unknown whether any one or more of such trustees is or are living or dead, that then, and in all and every such last-mentioned case and cases, it shall be lawful to and for the judges of the said courts respectively to order and direct that the other and others of such trustees who shall be forthcoming and ready and qualified to act do transfer such stock, annuities, or funds to and into the name of such person as aforesaid, and also that such forthcoming trustee do also receive and pay over the

[redacted]

whose name such stocks or funds shall stand shall be ordered to transfer the same without the concurrence of any other or others of such trustees; any thing herein contained to the contrary thereof notwithstanding. 10 G.4. c.56.

§ 19. This act shall be a full and complete indemnity and discharge to the governor and company of the bank of *England*, and their officers and servants, for all acts and things done or permitted to be done pursuant thereto, and that such acts and things shall not be questioned or impeached in any court of law or equity to their prejudice or detriment. Act to be an indemnity to the bank.

§ 20. If any person appointed to any office by any such society, and being entrusted with or having in his or her hands or possession, by virtue of his or her said office, any monies or effects belonging to such society, or any deeds or securities relating to the same, shall die, or become a bankrupt or insolvent, his or her executors or administrators, or assignees, or other persons having legal right, shall, within forty days after demand made by the order of any such society or committee thereof, or the major part of them assembled at any meeting thereof, deliver over all things belonging to such society to such person as such society shall appoint, and shall pay, out of the estates, assets, or effects of such person, all sums of money remaining due which such person received by virtue of his or her said office, before any of his or her other debts are paid or satisfied; and all such assets, estates, and effects shall be bound to the payment and discharge thereof accordingly. Executors, &c. to pay money due to societies before any other debts.

§ 21. All real and heritable property, monies, goods, chattels, and effects whatever, and all titles, securities for money, or other obligatory instruments and evidences, or muniments, and all other effects whatever, and all rights or claims belonging to or had by such society, shall be vested in the treasurer or trustee of such society for the time being, for the use and benefit of such society and the respective members thereof, their respective executors or administrators, according to their respective claims and interests; and, after the death or removal of any treasurer or trustee, shall vest in the succeeding treasurer or trustee, for the same estate and interest as the former treasurer or trustee had therein, and subject to the same trusts, without any assignment or conveyance whatever, except the transfer of stocks and securities in the public funds of *G. B.* and *Ireland;* and also shall, for all purposes of action or suit, as well criminal as civil, in law or in equity, in anywise touching or concerning the same, be deemed and taken to be, and shall in every such proceeding (where necessary) be stated to be, the property of the person appointed to the office of treasurer or trustee of such society for the time being, in his or her proper name, without further description; and such person shall, and he or she is hereby respectively authorised to bring or defend, or cause to be brought or defended, any action, suit, or prosecution, criminal as well as civil, in law or in equity, touching or concerning the property, right, or claim aforesaid of or belonging to or had by such society; provided such person shall have been thereunto duly authorised by the consent of the majority of members present at any meeting of the society or committee thereof; and such person so appointed shall and may, in all cases concerning the property, right, or claim Effects of societies to be vested in the trustees or treasurers for the time being, who may bring and defend actions, &c.

aforesaid of such society, sue and be sued, plead and be impleaded, in his or her proper name, as treasurer or trustee of such society, without other description; and no such suit, action, or prosecution shall be discontinued or abate by the death of such person, or his or her removal from the office of treasurer or trustee, but the same shall and may be proceeded in by the succeeding treasurer or trustee in the proper name of the person commencing the same, any law, usage, or custom to the contrary notwithstanding; and such succeeding treasurer or trustee shall pay or receive like costs as if the action or suit had been commenced in his or her name, for the benefit of or to be reimbursed from the funds of such society.

Limitation of responsibility of treasurers or trustees.

§ 22. The treasurer or trustee, or any other officer of any society established under the authority of this act, shall not be liable to make good any deficiency which may arise in the funds of such society, unless such persons shall have respectively declared by writing under their hands, deposited and registered in like manner with the rules of such society, that they are willing so to be answerable; and it shall be lawful for each of such persons, or for such persons collectively, to limit his, her, or their responsibility to such sum as shall be specified in any such instrument or writing: Provided, that the said treasurer, trustee, and every other the officer of any such society, shall be and they are hereby declared to be personally responsible and liable for all monies actually received by him, her, or them on account of or to and for the use of the said society.

Treasurer, &c. liable for money actually received.

Payment to persons appearing to be next of kin declared valid.

§ 23. Whenever the trustees of any society established under this act, at any time after the decease of any member, have paid and divided any sum of money to or amongst any person or persons who shall, at the time of such payment, appear to such trustees to be entitled to the effects of any deceased intestate member, the payment of any such sum or sums of money shall be valid and effectual with respect to any demand of any other person or persons as next of kin of such deceased intestate member, or as

person being or representing himself or herself to be a member of such society, or the nominee, executor, administrator, or assignee of any member of such society, or any other person whatever, shall in or by any false representation or imposition fraudulently obtain possession of the monies of such society, or any part thereof, or, having in his or her possession any sum of money belonging to such society, shall fraudulently withhold the same, and for which offence no especial provision is made in the rules of such society, it shall be lawful for any one justice of the peace residing within the county within which such society shall be held, upon complaint made on oath or affirmation by an officer of such society appointed for that purpose, to summon such person against whom such complaint shall be made to appear at a time and place to be named in such summons; and upon his or her appearance, or, in default thereof, upon due proof, upon oath or affirmation, of the service of such summons, it shall and may be lawful for any two justices residing within the county aforesaid to hear and determine the said complaint according to the rules of the said society, confirmed as directed by this act; and, upon due proof of such fraud, the said justices shall convict the said party, and award double the amount of the money so fraudulently obtained or withheld to be paid to the treasurer, to be applied by him to the purposes of the society so proved to have been imposed upon and defrauded, together with such costs as shall be awarded by the said justices, not exceeding the sum of 10*s.*; and in case such person against whom such complaint shall be made shall not pay the sum of money so awarded to the person and at the time specified in the said order, such justices are hereby required, by warrant under their hands and seals, to cause the same to be levied by distress and sale of the goods of such person on whom such order shall have been made, or by other legal proceeding, together with such costs as shall be awarded by the said justices, not exceeding the sum of 10*s.*, and also the costs and charges attending such distress and sale or other legal proceeding, returning the overplus (if any) to the owner; and, in default of such distress being found, the said justices of the peace shall commit such person so proved to have offended to the common gaol or house of correction, there to be kept to hard labour for such a period, not exceeding three calendar months, as to them shall seem fit: Provided nevertheless, that nothing herein contained shall prevent the said society from proceeding by indictment or complaint against the party complained of; and provided also, that no party shall be proceeded against by indictment or complaint, if a previous conviction has been obtained for the same offence under the provisions of this act.

fraud, and punish by fine or imprisonment.

§ 26. It shall not be lawful for any such society, by any rule at any general meeting, or otherwise, to dissolve or determine such society, so long as the intents or purposes declared by such society, or any of them, remain to be carried into effect, without obtaining the votes or consent of five-sixths in value of the then existing members of such society, to be ascertained in manner hereinafter mentioned, and also the consent of all persons then receiving or then entitled to receive relief from such society, either on account of sickness, age, or infirmity, to be testified under their hands individually and respectively; and for the purpose of ascertaining the votes of *such five-sixths in* value, every member shall be en-

Proceedings necessary for the dissolution of any society.

10 G. 4. c. 56.

titled to one vote, and an additional vote for every five years that he may have been a member; provided also, that no one member shall have more than five votes in the whole; and in all cases of dissolution, the intended appropriation or division of the funds or other property of such society shall be fairly and distinctly stated in the proposed plan of dissolution, prior to such consent being given; nor shall it be lawful for such society by any rule to direct the division or distribution of such stock or fund, or any part thereof, to or amongst the several members of such society, other than for carrying into effect the general intents and purposes of such society, declared by them, and confirmed by the justices of the peace as aforesaid, according to the directions of this act; but all such rules for the dissolution or determination of any such society, without such consent as aforesaid, or for the distribution or division of the stock or fund of such society, contrary to the rules which shall have been confirmed by the said justices at their sessions, and filed in pursuance of this act, shall be void and of none effect; and in the event of such division or misappropriation of the funds of such society, without the consent hereby declared to be requisite, the trustee or other officer or person aiding or abetting therein shall be liable to the like penalties as are herein-before provided for in cases of fraud.

Stock not divisible but for general purposes of the society.

Penalties for illegal dissolution or division of funds.

Rules to be made directing how disputes shall be settled.

§ 27. Provided, that provision shall be made by one or more of the rules of every such society, to be confirmed as required by this act, specifying whether a reference of every matter in dispute between any such society, or any person acting under them, and any individual member thereof, or person claiming on account of any member, shall be made to such of H. M.'s justices of the peace as may act in and for the county in which such society may be formed, or to arbitrators to be appointed in manner hereinafter directed; and if the matter so in dispute shall be referred to arbitration, certain arbitrators shall be named and elected at the first meeting of such society, or general committee thereof, that shall

Appointment of arbitrators.

[redacted]

the injunction of any court of equity; and should either of the said parties in dispute refuse or neglect to comply with or conform to the decision of the said arbitrators, or the major part of them, it shall and may be lawful for any one justice of the peace residing within the county within which such society shall be held, upon good and sufficient proof being adduced before him of such award having been made, and of the refusal of the party to comply therewith, upon complaint made by or on behalf of the party aggrieved, to summon the person against whom such complaint shall be made to appear at a time and place to be named in such summons; and upon his or her appearance, or in default thereof, upon due proof, upon oath, of the service of such summons, any two justices of the peace may proceed to make such order thereupon as to them may seem just; and if the sum of money so awarded, together with a sum for costs not exceeding the sum of 10*s.*, as to such justices shall seem meet, shall not be immediately paid, then such justices shall, by warrant under their hands and seals, cause such sum and costs as aforesaid to be levied by distress, or by distress and sale of the monies, goods, chattels, securities, and effects belonging to the said party or to the said society, or other legal proceeding, together with all further costs and charges attending such distress and sale or other legal proceeding, returning the overplus (if any) to the said party, or to the said society, or to one of the treasurers or trustees thereof; and in default of such distress being found, or such other legal proceeding being ineffectual, then to be levied by distress and sale of the proper goods of the said party, or of the officer of the said society, so neglecting or refusing as aforesaid, by other legal proceedings, together with such further costs and charges as aforesaid, returning the overplus (if any) to the owner: Provided, that whatever sums shall be paid by any such officer, so levied on his or her property or goods in pursuance of the award of arbitrators or order of any justices, shall be repaid, with all damages accruing to him or her, by and out of the monies belonging to such society, or out of the first monies which shall be thereafter received by such society.

10 G. 4. c. 56.

Justices shall enforce compliance with the decision of arbitrators.

§ 28. If by the rules of any such society it is directed that any matter in dispute as aforesaid shall be decided by justices of the peace, it shall and may be lawful for any such justice, on complaint being made to him of any refusal or neglect to comply with the rules of such society by any member or officer thereof, to summon the person against whom such complaint shall be made to appear at a time and place to be named in such summons; and upon his or her appearance, or in default thereof, upon due proof, on oath or affirmation, of the service of such summons, it shall and may be lawful for any two justices to proceed to hear and determine the said complaint according to the rules of the said society; and in case the said justices shall adjudge any sum of money to be paid by such person against whom such complaint shall be made, and such person shall not pay such sum of money to the person and at the time specified by such justices, they shall proceed to enforce their award in the manner herein-before directed to be used in case of any neglect to comply with the decision of the arbitrators appointed under the authority of this act.

Reference of disputes to justices, if so directed by the rules of the society.

§ 29. Every sentence, order, and adjudication of any justices under this act *shall be final and* conclusive to all intents and pur-

Orders of justices to be final

10 G.4. c.56.

pends, and shall not be subject to appeal, and shall not be removed or removable into any court of law, or restrained or restrainable by the injunction of any court of equity, and no suspension, advocation, or reduction shall be competent.

Funds may be invested in savings banks.

§ 30. It shall be lawful for any society established under the authority of this act from time to time to subscribe the whole or any part of the funds of such society into the funds of any institution which shall have taken the benefit of an act passed in the

9 G.4. c.92.

last session of parliament, intituled *An act to consolidate and amend the laws relating to saving banks*, subject to the provisions in the said last-recited act contained relating to friendly societies.

or into the bank of England, on receipts.

§ 31. It shall be lawful for any society established under authority of this act to pay directly into the bank of *England* any sum of money, not being less than 50*l*., to the account of the commissioners for the reduction of the national debt, upon the declaration of the treasurers or trustees of such society, or any two or more of them, that such monies belong exclusively to the society for which such payment is intended to be made; and the cashier or cashiers of the bank of *England* are hereby required to receive all such monies, and to place the same to the account raised in the names of the said commissioners for the time being in the books of the bank of *England*, denominated "The fund for the friendly societies;" and in case any such declaration shall not be true, then and in every such case the sum so paid shall be forfeited to the said commissioners; and all the clauses and provisions of an act passed in the 9th year of his present majesty's reign, intituled *An act to consolidate and amend the laws relating to savings banks*, with respect to the accounts of banks for savings, and the regulation of receipts, certificates, or order concerning the same, shall be applicable to the monies so paid into the bank of *England* under the authority of this act, as if the same had been repeated herein: Provided, that every society formed and

Societies enrolled under

Societies shall make annual audits and statements of the funds to the members.

§ 33. The rules of every such society shall provide that the treasurers, trustees, stewards, or other principal officer thereof shall, once in every year at least, prepare or cause to be prepared a general statement of the funds and effects of or belonging to such society, specifying in whose custody or possession the said funds or effects shall be then remaining, together with an account of all and every the various sums of money received and expended by or on account of the said society since the publication of the preceding periodical statement; and every such periodical statement shall be attested by two or more members of such society appointed auditors for that purpose, and shall be countersigned by the secretary or clerk of such society; and every member shall be entitled to receive from the said society a copy of such periodical statement, on payment of such sum as the rules of such society may require, not exceeding the sum of 6*d*.

Returns to be made to the clerks of the peace at certain periods.

§ 34. Reciting that is desirable, for the better security of such societies, that correct calculations of tables of payment and allowances, dependent on the duration of sickness and the probabilities of human life, may be constructed for their assistance: and that the present existing data on these subjects have been found imperfect and inefficient; it is enacted, that every such society established or to be established under the authority of this act shall, within three months after the expiration of the month of *December* 1835, and so again within three months after the expiration of every further period of five years, transmit to the clerk of the peace for the county wherein such society is held a return of the rate of sickness and mortality experienced by the said society within the before-mentioned period of five years, according to the form prescribed in the schedule appended to this act, a copy whereof shall be annexed to the rules of each society respectively.

Returns to be transmitted to secretary of state, and laid before parliament.

§ 35. The said clerks of the peace shall, within one month after the expiration of the month of *March* 1836, and so again within one month after the expiration of every further period of five years, transmit to one of H. M.'s principal secretaries of state a list of the societies which have been enrolled during such period under this act, specifying their names, the places where they have been established, and date of enrolment, and time of ceasing to exist, if such case should arise, and also a copy of the returns of sickness and mortality herein-before directed to be made to them according to the schedule (A); a copy of which list, with the schedule attached to it, shall be laid before both houses of parliament within one month then next ensuing, if parliament shall be sitting, or within one month after the time when parliament shall next sit.

Penalty on societies not making returns.

§ 36. Should any such society refuse or neglect to transmit or cause to be transmitted the aforesaid returns of sickness and mortality in the manner and within the time herein-before directed, the clerk of the peace within each county shall give immediate notice to such society, that unless the said return is made within twenty-one days from the date of such notice, the said society will, and thereupon shall, cease to be entitled to the privileges of this act, unless good and sufficient cause be shown to the justices at their then next ensuing general or quarter sessions why such returns *could not be made*.

10 G.4. c.56.

Exemption from stamp duties.

§ 37. No copy of rules, power, warrant, or letter of attorney granted or to be granted by any persons as trustee of any society established under this act, for the transfer of any share in the public funds standing in the name of such trustee, nor any receipts given for any dividend in any public stock or fund or interest of exchequer bills, nor any receipt, nor any entry in any book of receipt, for money deposited in the funds of any such society, nor for any money received by any member, his or her executors or administrators, assigns or attornies, from the funds of such society, nor any bond nor other security to be given to or on account of any such society, or by the treasurer or trustee or any officer thereof, nor any draft or order, nor any form of assurance, nor any appointment of any agent, nor any certificate or other instrument for the revocation of any such appointment, nor any other instrument or document whatever required or authorised to be given, issued, signed, made, or produced in pursuance of this act, shall be subject or liable to or charged with any stamp duty or duties whatsoever.

Construction of act.

§ 38. The word "society" in this act shall be understood to include friendly society or societies, institution or institutions; the word "rules" to include rules, orders, and regulations; the word "county" to include county, riding, division, or place; and the words "treasurer or trustee" to include treasurers or trustees; and the word "person" to include persons; and the word "book" to include books; and the word "bond" to include bonds; "name" to include names; "account" to include accounts; "member" to include members and honorary members; "clerk of the peace" to include town-clerk; unless it be otherwise specially provided.

Act to extend to all present and future societies.

§ 39. This act shall extend to all friendly societies hereafter to be established, and also to societies already established, as soon as they shall think fit to conform to the provisions thereof.

Societies al-

§ 40. Provided societies already enrolled shall not conform to

Schedule (A).

List of the Members of the _____ Society, held at _____, established on the _____; with a Return of the Sickness and Mortality experienced therein for the Period of Five Years, commencing January 1. 18—, and ending December 31. 18—.

[N. B.—This Column may be filled up with Initials.]	NAMES.		
	Trade or Profession.		
	Date of Birth.		
	Date of Admission into the Society.		
	Date of becoming a Free Member.		
	For what Time entitled to Relief on account of Sickness.	Weeks.	In 18
		Days.	
		Weeks.	In 18
		Days.	
		Weeks.	In 18
		Days.	
		Weeks.	In 18
		Days.	
		Weeks.	In 18
		Days.	
	For what Time entitled to Relief on account of Superannuation.	Weeks.	In 18
		Days.	
		Weeks.	In 18
		Days.	
		Weeks.	In 18
		Days.	
		Weeks.	In 18
		Days.	
		Weeks.	In 18
		Days.	
	Date of Death.		
	Place of Residence at Time of Death.		
	REMARKS.		

Form of Award.

WE, the major part of the arbitrators duly appointed by the ——— *society established at* ———, *in the county of* ———, *do hereby award and order, that* A. B. [specifying by name the party or the officer of the society] *do, on the* ——— *day of* ———, *pay to* C. D. *the sum of* ——— [or *we do hereby reinstate in* or *expel* A. B. *from the said society*, as the case may be]. *Dated this* ——— *day of* ——— 18—.

E. F.
G. H.

Form of Bond.

KNOW all men by these presents, that we A. B. *of* ——— *treasurer* [or *trustee, &c.*] *of the* ——— *society established at* ——— *in the county of* ———, *and* C. D. *of* ——— *and* G. H. *of* ——— (*as sureties on behalf of the said* A. B.) *are jointly and severally held and firmly bound to* E. F. *the present clerk of the peace* [or *town clerk*] *for the county* [or *county of a city, or county of a town, riding, division,* or *place,* as the case may be,] *of* ——— *in the sum of* ——— *to be paid to the said* E. F. *as such clerk of the peace,* [or *town-clerk,*] *or his successor clerk of the peace* [or *town-clerk*] *of the said county* [or *county of a city, &c.*] *for the time being, or his certain attorney; for which payment well and truly to be made we jointly and severally bind ourselves, and each of us by himself, our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals. Dated the* ——— *day of* ——— *in the* ——— *year of our Lord* ———.

Whereas the above-bounden A. B. *hath been duly appointed treasurer* [or *trustee, &c.*] *of the* ——— *society established as aforesaid, and he, together with the above-bounden* C. D. *and* G. H. *as*

Fuel.

[Stats. 43 Eliz. c. 14. — 9 Ann. c. 15. — 10 Ann. c. 6.]

BY stat. 43 *Eliz. c.* 14. all faggots to be sold shall contain in com- 43 Eliz. c.14.
pass, besides the knot of the bond, 24 inches of assize; and every faggot-stick within the bond, shall contain full three foot of size, except only one stick to be but one foot long, to stop or warden the binding.

By stat. 9 *Ann. c.* 15. § 1. all billets (except those made of beech, 9 Ann. c.15.
Ann. c. 6.) that lie exposed in public places where they are usually bought or sold, shall be assized, and cut or marked in manner following; that is to say,

All billets of what scantling or denomination soever shall contain in length three foot and four inches, and be of the following dimensions; viz.

Names of the billets.	Round.		Half round.		Quarter cleft.		
	in.	qr.	in.	qr.	in.	qr.	
A single	7	2	0	0	0	0	No notch.
A cast	10	2	12	1	12	0	One notch.
A trois	13	0	15	0	14	3	Three in the middle.
2 cast	15	0	17	1	17	0	Two notches.
3 cast	18	1	21	1	21	0	One at each end and one in the middle.
4 cast	21	1	24	2	24	0	4 notches.
5 cast	23	3	27	2	27	0	5 notches.
6 cast	26	0	30	0	29	2	6 notches.
7 cast	28	0	32	2	32	0	7 notches.
8 cast	30	0	34	3	34	0	8 notches.
9 cast	31	3	36	3	36	1	9 notches.
10 cast	33	2	38	3	38	0	10 notches.
11 cast	35	1	———		———		11 notches.
12 cast	36	3	———		———		12 notches.
13 cast	38	1	———		———		13 notches.
14 cast	39	3	———		———		14 notches.
15 cast	41	0	———		———		15 notches.
16 cast	42	2	———		———		16 notches.
17 cast	43	3	———		———		17 notches.
18 cast	45	0	———		———		18 notches.
19 cast	46	1	———		———		19 notches.
20 cast	47	2	———		———		20 notches.

§ 2. And if they shall not be thus assized and marked, then on information to a justice of the peace, mayor, or other head officer, he shall call before him six good and lawful men of the town, and shall swear them truly to inquire and present whether the same be of good and sufficient assize; and if they shall present that any of them is not sufficient, the same so being deficient shall be forfeited,

9 Ann. c.15. and be delivered to the overseers, to be by them distributed to the poor.

43 Eliz. c.14. And by stat. 43 *Eliz. c.* 14. the billets shall be measured within six inches of the midst; and the surplusage which shall happen between any two next measures, being above the one, and under the other, shall be taken for the benefit of the buyer.

Fuller's Earth. See **Woollen Manufacture**, vol. v.

Furze, Burning it in Forests. See **Burning**, vol. i.

Game.

THE statutes relating to this title are very numerous, and the sense sometimes a little perplexed, so that, perhaps, upon a view of the whole, it may seem that about four or five new acts, comprehending the several heads hereafter mentioned, and repealing all the preceding, would conduce to render this branch of our laws more intelligible and useful.

8 G.1. c.19. Penalties how to be recovered in general. After having first premised (in order to avoid frequent repetitions throughout this title), that it is enacted by stat. 8 *G.* 1. *c.* 19. that where any person for any offence against *any law in being at the making of the said act*, for the better preservation of the game, shall be liable to pay any pecuniary penalty or sum of money, on conviction before a justice of the peace, the prosecutor may either proceed to recover the same in such manner, or he may sue for the same (before the end of the second term after the offence committed, stat. 26 *G.* 2. *c.* 2.) by action of debt, or on the case, bill,

26 G.2. c.2.

game laws.) This being premised, I will treat of this subject under the following heads: —

I. *Property in Game.*

II. *General Observations concerning Forests, Chases, Parks, and Warrens, and of Trespass in pursuing Game, and herein of setting Spring Guns, &c.*
[7 & 8 G. 4. c. 18. — c. 29.]

III. *Qualification by Estate or Degree to kill Game, with the Punishment of Persons unqualified killing or having Game in their Possession. Selling or buying Game.*
[13 R. 2. st. 1. c. 13. — 33 H. 8. c. 6. — 7 J. 1. c. 11. — 22 & 23 C. 2. c. 25. — 4 & 5 W. 3. c. 23. — 5 Ann. c. 14. — 28 G. 2. c. 12. — 13 G. 3. c. 30. — 58 G. 3. c. 75.]

IV. *Certificate to be taken out.*
[24 G. 3. sess. 2. c. 43. — 25 G. 3. c. 50. — 52 G. 3. c. 93. Sched. (L). — 54 G. 3. c. 141. — 7 & 8 G. 4. c. 49.]

V. *Concerning Gamekeepers.*
[22 & 23 C. 2. c. 25. — 5 Ann. c. 14. — 9 Ann. c. 25. — 3 G. 1. c. 11. — 25 G. 3. c. 50. — 48 G. 3. c. 93. — 52 G. 3. c. 93. Sched. (L). — 59 G. 3. c. 102. — 7 & 8 G. 4. c. 29.]

VI. *Prevention of Persons going armed by Night for the Destruction of Game.*
[9 G. 4. c. 69.]

VII. *Laws for preserving the four-footed Game in particular.*
[For the statutes see the head of this section.]

VIII. *Laws for preserving the winged Game in particular.*
[For the statutes see the head of this section.]

I. Property in Game.

Before we take notice of the statutes made for the preservation of the game, it may be requisite to observe how the common law stood herein; which depends upon the difference between *tame* and *wild* animals. 3 *Bac. Abr.* 324.

Tame animals.

The tame animals, such as *horses, cows, sheep,* and the like, are such creatures as, by reason of their sluggishness and unaptness for motion, do not fly the dominion of mankind, but generally keep within the same pastures and limits, and may be easily pursued and overtaken, if by accident they should escape; and therefore the owner hath the same kind of property in them as he hath in all inanimate chattels, and for the violation thereof may bring an action of trespass. 3 *Bac. Abr.* 324.

Wild animals.

The wild animals, such as *deer, hares, foxes,* and such like, are those which, by reason of their swiftness or fierceness, fly the dominion of man; and in these no person can have a property,

unless they be tamed or reclaimed by him. (*a*) And as property is the power that a man hath over any other thing for his own use, and the ability that he hath to apply it to the sustentation of his being, when that power ceaseth, his property is lost; and, by consequence, an animal of this kind, which after any seizure escapes into the wild common of nature, and asserts its own liberty by its swiftness, is no more mine than any creature in the *Indies*, because I have it no longer in my power or disposal. 3 *Bac. Abr.* 324.

Hence it appears, that by the common law every man had an equal right to such creatures as were not naturally under the power of man, and that the mere caption or seizure created a property in them. By immediate taking and killing them, they belong to such person in the same manner as any other chattels, and cannot be taken from him; since the first seizure and caption was sufficient to vest the property of them in him. 3 *Bac. Abr.* 324.

Also by taking and taming them, they belong to the owner, as do the other tame animals, so long as they continue in this condition, that is, as long as they can be considered to have the mind of returning to their masters; for while they appear to be in this state, they are plainly the owner's, and ought not to be violated; but when they forsake the houses and habitations of men, and betake themselves to the woods, they are then the property of any man. 3 *Bac. Abr.* 325.

Another way of gaining property in them is by inclosure; and then the beasts must be understood to be mine, as the profits or the soil itself are; and they can no more be taken and carried off than any other profits of the land. Therefore, if deer be inclosed in a park or paddock, or conies in a field or warren, they become so much a man's own, that no one ought to kill or take them away. And since in this case it is the inclosure that retains them, (for take away the inclosure, and they are in their natural liberty,) therefore the party is said to have right as he hath to any other profits there inclosed, and a distinct and independent right in every

II. General Observations concerning Forests, Chases, Parks, and Warrens, and Trespass in pursuing Game; and herein of setting Spring-guns, &c.

A *forest* is a certain territory of woody grounds and fruitful pastures, privileged for wild beasts and fowls of forest, chase, and warren, to rest and abide there in the safe protection of the king for his delight and pleasure; which territory of ground so privileged is meered and bounded with unremovable marks, meers, and boundaries, either known by matter of record or by prescription; and also replenished with wild beasts of venery or chase, and with great coverts of vert for the succour of the said beasts there to abide; for the preservation and continuance of which, there are particular officers, laws, and privileges, belonging to the same, requisite for that purpose, and proper only to a forest and to no other place. *Manw.* (*a*) 143. Forest, what.

Note: that vert comprehends every thing which bears green leaves in the forest. *Manw.* 146.

And the lord having the wood in the tenant's land, which is still customary in many manors, was originally for preservation of the vert, for the sustentation of the lord's game there.

Beasts of forest are properly hart, hind, buck, hare, boar, and wolf: but legally all wild beasts of venery. 1 *Inst.* 233. Beasts of forest.

Purlieu comes from the French *pur*, clear, entire, and exempt, and *lieu* a place; that is, a place entire, clear, or exempt from the forest; and signifies those grounds which *Henry* the second, *Richard* the first, or King *John*, added to their ancient forests, over other men's grounds, and were disafforested by the statute of *charta de foresta*. 4 *Inst.* 303. *Manw.* 242. Purlieu, what.

But, nevertheless, the *purlieu*, as to some purposes, is forest still, and is disafforested as to the particular owners of the land, and for their benefit, and not generally to give liberty to any man to hunt the wild beasts and spoil the vert. And if those beasts escape out of the forest into the *purlieu*, the king hath a property in them still against any man but against the owners of the woods and lands in which they are; and such owners have a special property in them *ratione loci*, but yet so that they hunt them fairly and not forestall them in their return towards the forest. *Manw.* 292.

But a *purlieu* man may not hunt in every man's lands within the *purlieu*, but in his own lands only; and, therefore, if he find the beasts of the forest in his woods or lands in the *purlieu*, in such case he hath property in them against any other man *ratione soli* (the king only excepted). And if he begin the hunting in his own lands, then by reason of that property he may pursue his hunting through any man's woods or lands, so as he doth not enter into any forest, chase, park, or warren. And if he kill the beast in another man's land, and out of such privileged place, he may take and carry away the same by reason of the first property. But if

(*a*) Manwood's Treatise on the Forest Laws is a very learned and amusing book, written in the reign of Queen Elizabeth. Christian's G.L. 2.

the beast recover the forest, he must call back his dogs, for they are then the king's wild beasts again. And if he do not call back and rebuke his dogs, and they kill the beast in the forest, he is a trespasser, though himself never came within the bounds thereof. But if in hunting towards the forest the dogs fasten on it before it is within the bounds thereof, and the dogs still hanging on are drawn by the deer into the forest, and it is killed there, then by reason of the first property which he had *ratione soli*, and also by the pursuit and possession thereof before it entered the forest, he may lawfully enter and take it. *Manw.* 294.

Chase, what. A *chase* (from *chasser*, to chase) is a privileged place for receipt of deer and beasts of the forest, and is of a middle nature betwixt a forest and park. It is commonly less than a forest, and not endowed with so many liberties, as officers, laws, courts, and yet is of a larger compass than a park, having more officers and game than a park. Every forest is a chase, but every chase is not a forest. It differeth from a park in that it is not enclosed; for if it be inclosed, it is a good cause of forfeiture; though it must have certain metes and bounds, but it may be in other men's grounds as well as in one's own. *Manw.* 49. 147.

Beasts of chase. Beasts of chase are, the buck, doe, fox, martern (*a*), and roe. *Manw.* 144.

Park, what. A *park* (from the French *parquer*, to enclose) is a large parcel of ground privileged for wild beasts of chase by the king's grant, or by prescription. *Read.* Game.

Beasts of park. The beasts of park properly extend to the buck, doe, fox; but in a common and legal sense to all the beasts of the forest. *Id.*

Park to be enclosed. A park must be enclosed; for if it lie open, it is a good cause of seizure into the king's hands, as a thing forfeited; and the owner cannot have an action against those that hunt in his park, if it lies open. *Id.*

Deer shall go to the heir. Deer in a park shall go to the heir, and not to the executor. 1 *Inst.* 8.

[redacted]

In an action of trespass for entering a free warren, and which is sustainable even against the owner of the soil, though damages are under 40*s.*, the plaintiff is entitled to full costs; for, as observed by *Blackstone* J. "In actions, instituted merely for breaking free warren, it is impossible the title to the soil can ever come in question; for though both may concur in one person, yet the title to the free warren is always collateral to that of the land; for a man may have a free warren *in alieno solo.*" Besides, the hare which was hunted was the personal property of the owner of the free warren; and if any injury be done to personal property, that will take it out of the statute, and entitle the plaintiff to full costs. *Lord Dacre* v. *Tebb*, 2 *Black. Rep.* 1151. 2 *Chitty, G. L.* 21. — 1166.

Hunting in a free warren.

A man may have free warren in another's land.

A forest is the highest franchise of princely pleasure; the next to that is a free chase; a chase, in one degree, is the same as a park, only a park is inclosed, and a chase is always open; the next in degree to a free chase is a park; and the next unto a park is the franchise of a free warren. And a forest comprehends in it a chase, park, and warren. And for that cause, the beasts of chase, and the beasts and fowls of warren, are privileged within a forest as well as the beasts of the forest are. *Manw.* 52.

Which of these is the highest franchise.

A person may have common in a chase, as well as in a forest; but a forest is governed by the forest law, and a chase and park by the common law. 4 *Inst.* 314. *Manw.* 52.

Common in a chase.

And by the common law (says *Blackstone*) no person is at liberty to take or kill any beasts of chase, but such as have an ancient chase or park; unless they be also beasts of prey. 2 *Blac. Com.* 416.

If I find a pheasant in my lands, and I let my hawk fly, I may follow the flight into another man's land by reason of the first property which I had in the pheasant *ratione soli;* and if my hawk kill the pheasant in another man's land, I may enter and take it, by reason of that property and pursuit: and in that case, I shall not be punished as a trespasser for taking and carrying away the pheasant, but only for entering the ground. But if the pheasant fly into a warren (which is a privileged place for birds of warren) and the hawk kill it there, the falconer shall not have the pheasant, but the owner of the warren. And the law is the same in the cases of all wild beasts of the forest and chase. *Manw.* 389.

But one who finds game on his own ground, cannot justify pursuing it into the land of another. *Deane* v. *Clayton*, bart. 7 *Taunt.* 489.

Pursuit of game.

If conies are hunted out of the warren, or deer out of the park, and the warrener or parker pursues them, he may retake them; for in parks and warrens, officers are established by authority to have an eye over the game, and to keep it within the boundaries; so that the property is not altered by driving it out of the inclosures, unless it be also out of the pursuit of the officers; for as long as he that is thus trusted doth pursue it, it is not in its natural liberty, but is still belonging to the park or warren. 3 *Bac. Abr.* 326.

Game escaped out of the inclosure, may be retaken on fresh pursuit.

If a man start any game within *his own* grounds, and follow it into another's and kill *it there,* the property remains in himself;

Property in game killed.

and this is grounded on reason and natural justice, for the property consists in the possession, which possession commences by the finding it in his own liberty, and is continued by the immediate pursuit. 11 *Mod.* 75. 2 *Blac. Com.* 419.

And so if a stranger start game in one man's chase or free warren, and hunt it into another liberty, the property continues in the owner of the chase or warren; this property arising from privilege, and not being changed by the act of a mere stranger. 2 *Ld. Raym.* 251. 2 *Blac. Com.* 419.

If a man start game on *another's* private grounds, and kill it there, the property belongs to him in whose ground it was killed, because it was also started there, this property arising *ratione soli.* But if after being started there, it is killed in the ground of a *third* person, the property belongs not to the owner of the first ground, because the property is local; nor yet to the owner of the second, because it was not started in his soil; but it vests in the person who started and killed it, though guilty of a trespass against both the owners. 2 *Blac. Com.* 419.

A.'s dog hunted and caught on B.'s land a hare started on the grounds of C. The property is thereby vested in A., who may maintain trespass against B. for afterwards taking the hare away. *Churchward* v. *Studdy*, 14 *East*, 249.

If one were to give leave to another to hunt over his premises, it would not give him the liberty of shooting there. *Per Gibbs* C. J., *Moore* v. *Ld. Plymouth*, 7 *Taunt.* 627.

23 El. c. 10. Hunting amongst growing corn.

By stat. 23 *El. c.* 10. § 4. No person shall hunt with his spaniels in any ground where corn or other grain shall grow (except in his own ground) at such time as any eared corn shall be growing, nor before it be shocked, on pain of forfeiting to the owner of the grain 40*s.*

Trespass in going upon another's ground.

No man can come upon another man's ground to kill game, without being liable to an action of trespass. 2 *Bac. Abr.* 613. 2 *Bla. Com.* 417. 2 *Blac. Rep.* 900.

there to my annoyance, and then offer me a halfpenny in satisfaction, alleging that I had received no actual damage? This is a much stronger case, for no conduct could have been more outrageous than that of the defendant on this occasion. *Heath* J.— I left it to the jury to say what damages would be a compensation, and it never can be contended that these were too much. I remember a case many years ago, where the jury gave 500*l.* for merely throwing off a man's hat, and the court refused to set aside the verdict. *Per Curiam.*—Rule refused. Merest v. Harvey.

And in *Reynold* v. *Edwards*, 6 *T. R.* 11., which was an action of trespass tried before *Buller* J. at *Staffordshire Assizes*, where it appeared in evidence that a trespass was committed by the defendant in coursing over a close belonging to the plaintiff, who four years before had given a general notice to all persons not to trespass on his lands; and where it also appeared that the defendant was anxious to avoid trespassing on the plaintiff's grounds, and had made enquiries respecting his boundaries; the plaintiff's counsel pressed the judge to certify that the trespass was wilful and malicious, in order to entitle the plaintiff to full costs under 8 & 9 *W. c.* 11. § 4. (*a*); and the judge conceiving that he had no discretion on the subject accordingly certified, reserving liberty to the defendant to move to set aside that certificate, if this court should be of opinion that the statute was not compulsory on the judge.—Afterwards a motion was made to that effect. But the *court* refused to grant the rule, saying, that in the case of *Swinnerton* v. *Jarvis*, *E.* 22 *G.* 3., in the Common Pleas, it was determined that if it appeared that the trespass, however trifling, was committed after notice, the judge was bound to certify under the statute; and that it was proper to adhere to that as an universal rule.

But although the judges have always certified, after notice not to trespass in pursuit of game, they are not bound to certify after notice in other trespasses. *Good* v. *Watkins*, 3 *East*, 498.

It appears to have been ruled by Lord *Ellenborough* C. J. at N. P. that a person discharging a gun from the outside of a field into it, so as the shot must have struck the soil, was guilty of breaking and entering the field. See *Pickering* v. *Rudd*, 4 *Campb.* 220. 1 *Stark. N. P.* 58. S. C.

Notwithstanding the common law allows of the hunting of foxes and badgers, being beasts of prey, in another man's ground, because the destroying of them is looked upon as a public benefit; (and in *Gundry* v. *Feltham*, 1 *T. R.* 334., it was ruled on demurrer that the defendant was justified in *following* over the plaintiff's grounds a fox that had been started in another person's ground,) yet the digging and breaking the ground to unearth them is held to be unlawful, and the owner of the ground may maintain an action of trespass in that case. *Cro. Jac.* 321. No trespass in following beasts of prey.

With respect to the case of *Gundry* v. *Feltham*, Mr. *Christian* observes, that the judgment was only justified by the pleadings, Fox-hunting when illegal.

(*a*) Stat. 8 and 9 *W. c.* 11. § 4. enacts, that in all actions of trespass where, at the trial, it shall appear and be certified by the judge under his hand, upon the back of the record, that the trespass was wilful and malicious, the plaintiff shall recover not only his damages, but his full costs of suit. Wilful trespass.

which admitted that the riding after the fox, in that case, was the only means of killing it. *Christian's G. L.* 114.

But in the case of *The Earl of Essex* v. *Capel*, at *Hertford Sum. Ass.* 1809, where the subject was properly pleaded upon the record, Lord *Ellenborough* C. J. directed the jury to find for the plaintiff, if they thought from the evidence that the defendant pursued the fox for his own pleasure and amusement, and if they thought the good of the public was not his sole governing motive. *Christian's G. L.* 114. 2 *Chitty's G. L.* 1381. S. C.

Foxhunter, like all other hunters, may be warned off; and the plaintiff by the judge's certificate will have full costs, though the jury do not give 40*s.* damages. *Ib.*

A gamekeeper cannot justify killing the dog of a person following game within the boundaries of the manor.

Vere v. *Lord Cawdor and King*, 11 *East*, 568. In this case, which was an action of trespass for shooting and killing a dog of the plaintiff, there was a plea of not guilty, and a special plea that Lord *Cawdor* was lord of the manor, and the defendant gamekeeper, duly deputed and appointed to preserve the game upon the manor; that the dog was in a close, parcel of the manor, *running after, chasing*, and hunting divers hares there, and that the defendant, *King*, as such gamekeeper, in the said close, *for the preservation of the said hares*, shot and killed the said dog.— To this plea there was a demurrer: and after argument, Lord *Ellenborough* C. J. said, — The question is, Whether the plaintiff's dog incurred the penalty of death for running after a hare in another's ground? And if there be any precedent of that sort, which outrages all reason and sense, it is of no authority to govern other cases. There is no question here as to the right of the game. The gamekeeper had no right to kill the plaintiff's dog for following it. The plea does not even state that the hare was put in peril, so as to induce any necessity for killing the dog in order to save the hare. — *Per curiam.* Judgment for the plaintiff.

7&8 G. 4. c. 29. Deerkeepers,

But by stat. 7 & 8 *G.* 4. *c.* 29. § 29. If any person shall enter into any forest, chase, or purlieu, whether enclosed or not, or into

intent that the same or whereby the same may destroy or inflict grievous bodily harm upon a trespasser, or other person coming in contact therewith, the person so setting or placing, or causing to be so set or placed, such gun, trap, or engine as aforesaid, shall be guilty of a misdemeanor. 7 & 8 G. 4. c. 18. man-traps, &c. guilty of a misdemeanor.

§ 2. Provided that nothing herein contained shall extend to make it illegal to set any gin or trap such as may have been or may be usually set with the intent of destroying vermin. Proviso for traps for destroying vermin.

§ 3. If any person shall knowingly and wilfully permit any such spring-gun, man-trap, or other engine as aforesaid, which may have been set, fixed, or left in any place then being in or afterwards coming into his or her possession or occupation, by some other person or persons, to continue so set or fixed, the person so permitting the same to continue shall be deemed to have set and fixed such gun, trap, or engine, with such intent as aforesaid. Persons permitting guns, traps, &c. set by others to continue, deemed to have set the same.

§ 4. Provided that nothing in this act shall be deemed or construed to make it a misdemeanor, within the meaning of this act, to set or cause to be set, or to be continued set, from sunset to sunrise, any spring-gun, man-trap, or other engine which shall be set or caused or continued to be set in a dwelling-house for the protection thereof. Proviso for guns, traps, &c. set for the protection of dwelling-houses.

§ 6. This act not to extend to *Scotland*. Not to extend to Scotland.

Before the passing of this statute the following cases had been decided, and will still be applicable either as authorities in similar cases, or as establishing particular principles.

Townsend v. *Wathen*, 9 *East*, 277. In an action for placing traps baited with flesh and strong-scented articles, by which the plaintiff's dogs were enticed from the public highways to the said traps, and were caught therein and wounded, there was a verdict for the plaintiff; and the court of K. B. refused to arrest the judgment, there being no doubt but the action was maintainable. — A rule *nisi* was, however, granted for setting aside the verdict, as against the evidence; and after hearing the grounds of objection against it, Lord *Ellenborough* C. J. said, — It appears by the evidence reported, that the traps were placed so near to the plaintiff's court-yard, where his dogs were kept, that they might scent the bait, without committing any trespass on the defendant's wood. Every man must be taken to contemplate the probable consequences of the act he does; and, therefore, when the defendant caused traps scented with the strongest meats to be placed so near to the plaintiff's house as to influence the instinct of those animals, and draw them irresistibly to their destruction, he must be considered as contemplating this probable consequence of his act. That which might be taken as general evidence of malice against all dogs, coming accidentally within the sphere of the attraction which he had placed there, must surely be evidence of it against those in particular which were placed nearest to the source of attraction, and within the constant influence of it. What difference is there in reason between drawing the animal into the trap by means of his instinct, which he cannot resist, and putting him there by manual force? If a man knowingly keep a dog accustomed to bite, and any person coming by chance in his way be bitten, an action lies against the owner (*a*), though he had no malice against the particular individual. Here there is evidence that the defendant's purpose in setting the traps was to catch dogs in general, as well as If a man place dangerous traps, baited with flesh, in his own ground, so near to a highway, or to the premises of another, that dogs passing along the highway, or kept in his neighbour's premises, must probably be attracted by their instinct into the traps; and in consequence of such act his neighbour's dogs be so attracted, and thereby injured, an action on the case lies.

(*a*) See Judge v. Cox, 1 Stark. N. P. 285.

vermin; for he afterwards recompensed his servant for dogs taken in the traps. The rule, therefore, *omnis ratihabitio retro trahitur et mandato æquiparatur*, applies to this case. Without, therefore, considering what had happened before the plaintiff came to his residence in the defendant's neighbourhood; when he did come, he came to a place where the mischief existed and continued to operate within the sphere where he might lawfully have his dogs, and which in fact did afterwards operate upon them to the plaintiff's prejudice. The other judges agreeing, the rule was discharged.

Deane v. *Clayton*, Bart. — 7 *Taunt.* 489. — 2 *Marsh*, 577. — 1 *Moore, C. P.* 208. Sir *William Clayton*, the defendant, was owner and occupier of a wood adjoining another wood belonging to *T.*, divided therefrom by a low bank and a shallow ditch, not being a sufficient fence to prevent dogs from passing from *T.*'s wood into the defendant's wood. There were public footpaths through the defendant's wood, not fenced off therefrom. The defendant, to preserve hares in his wood, and to prevent them from being killed by dogs and foxes that came therein in pursuit of hares, kept iron spikes (called *dog-spears*) screwed and fastened into several trees in his wood, each spike having two sharp ends, and so placed that each end should point along the course of a hare-path, and purposely placed at such a height from the ground as to allow a hare to pass under them without injury, but to wound and kill a dog that might happen to run against one of the sharp ends thereof, the spikes being, from their nature and positions, adapted to effect the purpose for which the defendant fastened them there: none of them was less distant than 50 yards from any footpath, and some were from 150 to 160 yards distant therefrom. The defendant kept notices painted on boards placed at the outside of some parts of the wood, that steel-traps, spring-guns, and dog-spikes were set in that wood for vermin. The plaintiff, with *T.*'s permission, was sporting in *T.*'s wood with a valuable pointer; a hare rose in his wood, and was pursued by the dog thereout, over the bank and ditch, into the defendant's wood, and in the pursuit there ran against one of the sharp spikes and



the qualification was raised in proportion, the estate continuing nearly the same; for an estate of 40*s.* a year in the reign of K. *Richard* the second was not much inferior to an estate of 100*l.* a year in the reign of K. *Charles* the second. And the penalty for destroying the game was even more severe then than it is now.

As those ancient laws relating to the game are still in force, and are generally enacted so to be by the subsequent statutes, it will be necessary, in order to have a thorough knowledge of this matter, to insert them in their order, because the penalties on each being different, the prosecutor or justices may choose upon which of them they will convict an offender. Thus, by stat. 5 *Ann. c.* 14. hereafter following, if a person not having a 100*l.* a-year shall keep or use dogs or engines to destroy the game, he shall forfeit 5*l.*; but if such person have not 40*s.* a-year, he may upon stat. 13 *R.* 2. *st.* 1. *c.* 13. be punished by a year's imprisonment; and so of the rest: Provided, that no person be prosecuted upon more than one act for one offence.

The first qualification relating to the game was in stat. 13 *R.* 2. stat. 1. *c.* 13.; by which it is enacted, that no layman which hath not lands or tenements of 40*s.* a-year, nor clergyman if he be not advanced to 10*l.* a-year, shall have or keep any greyhound, hound, or other dog to hunt; nor shall use ferrets, hays, nets, hare-pipes, nor cords, nor other engines, for to take or destroy hares, nor conies, nor other gentlemen's game; on pain of a year's imprisonment. And the justices of the peace (that is, in their sessions) shall enquire of the offenders in this behalf, and punish them by the pain aforesaid. 13 R. 2. st. 1. c. 13. (1389.) 40*s.* a-year.

The next qualification by estate or degree to kill game was by stat. 1 *J.* 1. *c.* 27. § 3.; whereby it is enacted, "that all and every person and persons which from or after the said 1st day of *August* (1604) shall have or keep any greyhound for coursing of deer or hare, or setting-dog or dogs, or net or nets, to take pheasants, or partridges, except such person or persons which shall be seised in their own right or in the right of their wives, of lands, tenements, or hereditaments, of the clear yearly value of 10*l.* by the year or more, over and above all charges and reprises, of some estate of inheritance; or of lands, tenements, or hereditaments, in his own right or in the right of his wife, for term of life or lives of the yearly value of 30*l.* over and above all charges and reprises, or be possessed of goods or chattels to the full value of 200*l.* to his own use; or be the son or sons of any knight, or of any baron of parliament, or of some person of higher degree, or the son and heir-apparent of any esquire; and being thereof convicted, as aforesaid, shall by the said justices of the peace be committed and imprisoned in manner and form as in and by this present act before is expressed, specified and declared; except such person and persons so offending and thereof convicted as aforesaid, do forthwith pay or cause to be paid to the churchwardens of the said parish where the said offence shall be committed, or the party apprehended, to the use of the poor of the said parish, the sum of 40*s.*" (*a*); [or after one month 1 J. 1. c. 27. (1604.) 10*l.* a-year.

(*a*) This latter paragraph is part of the § 2. of the same act, but it seems doubtful whether it refers only to the offences described in that sect. *viz.* the shooting at, killing, and destroying the game therein described, or can be incorporated with this 3d sect.; inasmuch as the condition of the recognisance is to be "not to kill, &c. by *any of the means in* that § 2. aforesaid." K.

after his commitment he become bound by recognisance with two sureties before two justices in 20*l.* a piece not to offend again in like manner.]

3 J. 1. c. 13. (1605.) 40*l.* a-year.

The next qualification relates to deer and conies only, in the 3 *J.* 1. *c.* 13. § 5., by which it is enacted, that if any person not having manors, lands, tenements, or hereditaments of the clear yearly value of 40*l.* or not worth in goods 200*l.*, shall use any gun or bow, or cross-bow, to kill any deer or conies; or shall keep any buckstall or engine-hayes, gate-nets, purse-nets, ferrets, nets, or coney-dogs, (except he have grounds inclosed, and used for the keeping of deer or conies, the increasing of which said conies shall amount to the clear yearly value of 40*s.* or keepers or warreners in their parks, warrens, or grounds belonging to their charge,) in such case any person having lands, tenements, or hereditaments, of the clear yearly value of 100*l.* in fee simple, fee tail, or for life, in his own right or the right of his wife, may take from such person to his own use for ever such guns, bows, cross-bows, buckstalls, &c. &c.

7 J. 1. c. 11. 40*l.* a-year.

The next qualification (which relates to *pheasants* and *partridges* only,) is by stat. 7 *J.* 1. *c.* 11. § 7. and is as follows: (§ 7.) Every free warrener, every lord of a manor, and every freeholder seised in his own or his wife's right of lands, tenements, and hereditaments of the clear yearly value of 40*l.*, of some estate of inheritance, or of lands, tenements, and hereditaments, in his own or his wife's right, for term of life or lives, of the yearly value of 80*l.* clear, or worth in goods 400*l.*, may by him, or his menial and household servants sufficiently thereto by him authorised, take pheasants and partridges (in the day-time only) in his own or his master's free warren, manor, and freehold, betwixt *Michaelmas* and *Christmas* yearly.

22 & 23 C. 2. c. 25. 100*l.* a-year.

The last general qualification by estate or degree to kill game, and which is now most to be regarded, is in stat. 22 & 23 *C.* 2. *c.* 25. § 3. by which it is enacted, "that all and every person and persons not having lands and tenements or some other estate of inheritance in his own or his wife's right of the clear yearly value of 100*l.* *per annum*, or for term of life, or having lease or leases of 99 years

defendant was qualified by having an estate of inheritance of 100*l.* a-year *in right of his wife*, which is one of the qualifications of the statute of *Car.* 2. — *Per* Lord *Ellenborough* C. J. It has been settled that all the qualifications for killing game must be specifically negatived in the conviction, and that being so, there is no more reason for dispensing with the terms in which they may be aptly and certainly negatived. Here one of the qualifications mentioned in the statute is omitted to be negatived, namely, that the defendant had an estate of inheritance of the annual value of 100*l.* in right of his wife: we must presume, therefore, that it could not have been truly negatived. It is always safer in these cases to follow the words of the act. The other judges agreed. — Conviction quashed. R. v. Earnshaw.

Of the clear yearly value of 100*l.* per annum.] Where the estate is mortgaged, if the interest of the sum for which it is mortgaged reduces the rent, where the estate is let, or the value, where it is in the hands of the mortgagor, under 100*l.* a-year, the owner of the estate is *not qualified* to kill game. *Wetherell* v. *Hall*, *Cald.* 280. In what case mortgagor in possession is qualified.

The words "*clear yearly value*," mean clear yearly value to the person in possession. S. C.

On a question arising upon an (*a*) information before magistrates, as to the defendant's qualification, the magistrates may ground their opinion of his not being qualified on the fact of the defendant's having sworn on a former day under the income-tax act, that his *annual income* did not exceed 50*l.* and his admission on the hearing that the value had not increased since the time of making such declaration. *R.* v. *Clarke*, 8 *T. R.* 220. What shall be deemed sufficient proof of a qualification.

Or for term of life.] It was doubted upon these words, in what order of qualification an ecclesiastical living shall be ranked, which a man holds not in his own or his wife's right, but in the right of his church. It is allowed to be a life-estate, although it may happen to be determined sooner, as by resignation, deprivation, or accepting another living incompatible. But the question is, whether these words shall belong to the former or the latter part of the sentence? The difficulty seems to be partly occasioned by the disjointed manner of punctuation. But the points are no part of the statute. The statutes themselves are without points; the punctuation is only made by the printer. Abstracted from the punctuation, it should seem that the former part of the sentence, respecting the qualification of 100*l.* a-year by an estate of inheritance, ought to terminate with the words *per annum*; and that a life-estate, being of inferior quality, ought to be coupled with leasehold, whereof 150*l.* a-year is necessary to constitute a qualification. And so it was determined in the case of *Lowndes*, esq. v. *Lewis*, clerk, by Lord *Mansfield*, *Ashhurst* J. and *Buller* J., against the opinion of *Willes* J. that a life-estate of less than 150*l.* *per annum* is not a qualification to kill game. *Cald.* 188. Ecclesiastical living.

Having lease for 99 *years of* 150*l.* *yearly value.*] An estate of the value of 150*l.* *per annum* holden by the party in his own right under a lease of 99 years to trustees, if he and others should so

(*a*) The information need not be *qui tam*. *Rex* v. *Love*, 7 *T. R.* 152. If the evidence be given on the day the defendant is stated to have appeared, it shall be intended to have been given in his presence, *ib.* The magistrates should state the evidence, and *not merely the result of it*, *ib.*

long-live, is a sufficient qualification; and leases of this kind have always been so deemed. *Earl Ferrers* v. *Henton*, 8 *T. R.* 506.

ons and heirs pparent of squires.

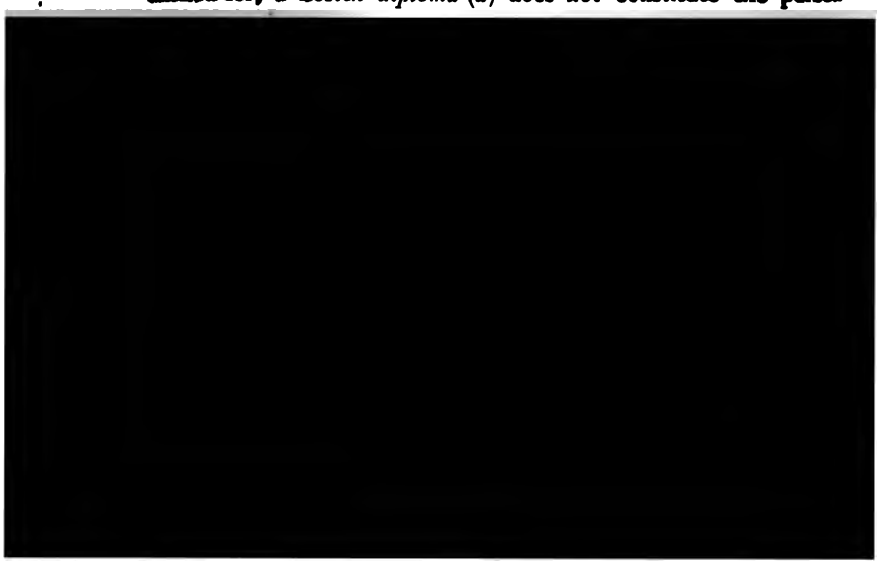
Other than the son and heir apparent of an esquire.] Esquire, *escuyer, scutarius*, called by the Saxons *schilt knaben* or *knapen*, (from whence cometh the word *knave*, which anciently signified a servant,) is a name of dignity next above the common title of gentleman and below a knight. Heretofore he was attendant and had employment as a servant, waiting on such as had the order of knighthood, bearing their *shields*, and helping them to horse, or such like. And this title is of that nature with us now, that to whomsoever either by blood or place in the state, or other eminency, we conceive some higher attribute should be given than that sole title of gentleman, knowing yet that he hath no other honorary title legally fixed on him, we usually style him an esquire in such passages as require legally that his degree or state be mentioned. *Seld. Tit. of Hon.* 374. 362. 687.

f other perons of "higher egree."

Or other person of higher degree.] It has been decided that these words confine the qualification (without estate) to the son and heir apparent *of* an esquire, or the son and heir apparent *of* a person of higher degree, but do not qualify such esquire or person of higher degree himself. *R.* v. *Utly*, 1 *T. R.* 418. *Jones* v. *Smart*, 1 *T. R.* 44.

Doctor of physic of a Scotch university.

Jones v. *Smart*, 1 *T. R.* 44. This was an action against the defendant, to recover the penalty of 5*l.* for killing game not being duly qualified. — The defendant had a diploma from the university of *St. Andrew*'s in *Scotland*, which it was contended gave him a qualification, and that a doctor of physic was of higher degree than an esquire, and therefore qualified: but Lord *Mansfield* C. J. thought (in which opinion *Ashhurst* and *Buller* Js. concurred, *dissentiente Willes* J.) that even if a physician, who had taken his degree in *England*, were entitled to the privilege contended for, a *Scotch diploma* (*a*) does not constitute the person



taking out the same a "*person of higher degree,*" so as to qualify his son and heir apparent to kill game.

Son only qualified during father's life.

The son can only be qualified whilst his father lives, because the words are *son and heir apparent;* he ceases to be heir apparent upon his father's death, and therefore that species of qualification is then at an end. *Christian's G. L.* 130.

What constitutes an esquire.

As to what entitles any one to the rank and privileges of an esquire, Mr. Justice *Blackstone* says, "It is, indeed, a matter somewhat unsettled what constitutes the distinction, or who is a real *esquire;* for it is not an estate, however large, that confers this rank upon its owner. *Camden,* who was himself a herald, distinguishes them the most accurately; and he reckons up four sorts of them.—1st, The eldest sons of knights, and their eldest sons in perpetual succession.—2d, The eldest sons of younger sons of peers, and their eldest sons in like perpetual succession; both which species of esquires, Sir *Henry Spelman* entitles *armigeri natalitii.*—3d, Esquires created by the king's letters patent or other investiture, and their eldest sons.—4th, Esquires by virtue of their offices, as justices of the peace (*a*), and others, who bear any office of trust under the crown. To these may be added, the esquires of knights of the bath, each of whom constitutes three at his installation; and all *Irish* peers; for not only these, but the eldest sons of peers of *Great Britain,* though frequently titular lords, are only esquires in the law, and must be so named in all legal proceedings." 1 *Blac. Com.* 406. See 1 *Chitty on the Game Laws,* 55.

(*a*) See note, p. 540.

All persons who are styled esquires under the king's sign-manual, as sheriffs and captains in the army and navy, will be esquires, and their heirs apparent will be qualified to kill game. *Christian's G. L.* 132.

Every barrister is an esquire. 1 *Wils.* 245.

Esquire (*Armiger*) is a name that is frequently used in divers acts of parliament to denote an estate and degree; all dukes, marquisses, earls, viscounts, and barons of other nations, or which are not lords of parliament, are to be named *esquires;* if *knights,* they are to be termed *milites.* The sons of all the peers and lords of parliament are, in law, esquires, in the life of their fathers. And the eldest son of a knight is an esquire. *Wood's Inst.* 44.

Honours can only be conferred by the crown.

The son of a captain commandant of volunteer infantry not qualified.

A commission signed by the lord lieutenant of a county constituting a person captain commandant of a corps of volunteer infantry, and styling him an esquire, does not create such person an esquire so as to qualify his son and heir apparent to kill game; for the lord lieutenant cannot confer honours. *Talbot* v. *Eagle,* *C. P.* 1 *Taunt.* 510.

22 & 23 C. 2. c. 25. Gamekeepers seizing dogs, ferrets, and engines used within the precincts of manors.

By stat. 22 & 23 *C.* 2. *c.* 25. § 2. All lords of manors or other royalties not under the degee of an esquire, may by writing under their hands and seals authorise one or more gamekeepers within their respective manors or royalties, who being thereto so authorised, may take and seize all such guns, bows, greyhounds, setting dogs, lurchers, or other dogs to kill hares or conies, ferrets, tramels, lowbels, hays, or other nets, hare-pipes, snares, or other engines for the taking and killing of conies, hares, pheasants, partridges, or other game, as within the precincts of such respective manors shall be used by any person who by this act is prohibited to keep or use the *same.* And moreover, any such gamekeeper or

22 & 23 C. 2. c. 25.

Searching for dogs or engines.

other person being thereunto authorised by warrant (I) of one justice, may in the day-time search the houses, outhouses, or other places of any such person by this act prohibited to keep or use the same, as upon good ground shall be suspected to have or keep in his custody any guns, bows, greyhounds, setting-dogs, ferrets, coney-dogs or other dogs to destroy hares or conies, hays, tramels, or other nets, lowbels, hare-pipes, snares, or other engines aforesaid, and the same may seize, detain, and keep for the use of the lord of the manor or royalty where found or taken, or otherwise to cut in pieces or destroy, as things by this act prohibited to be kept by persons of their degree. See *Launock* v. *Brown*, Vol. III. tit. Process.

4 & 5 W. 3. c. 23. 20*s*. penalty for keeping or using dogs or engines.

By stat. 4 & 5 *W.* 3. *c.* 23. § 3. If any unqualified person shall have, keep, or use any bows, greyhounds, setting-dogs, ferrets, coney-dogs, hays, lurchers, nets, tunnels, lowbels, hare-pipes, snares, or any other instruments for destruction of fish, fowl, or other game, and *shall not give a good account* before a justice, to the satisfaction of such justice *how he came by the same, or* else *shall not* in some convenient time (to be set by such justice) *produce the party of whom he bought the same, or some* other credible *person to depose upon oath such sale* thereof, he shall forfeit for every offence not under 5*s*. nor above 20*s*., half to the informer, and half to the poor, to be levied by distress, rendering the overplus, if any be; for want of distress, to be committed to the house of correction not more than one month nor less than ten days, there to be whipped and kept to hard labour. And if any person so produced or charged with the said offence shall not before the justice give such evidence of his innocence as aforesaid, he shall be convicted thereof in the same manner as the person first charged therewith, and so from person to person till the first offender be discovered.

Lords and keepers may oppose offenders

§ 4. All lords of manors or other royalties or persons authorised by them as gamekeepers may, within their manors or royalties, oppose and resist such offender in the night-time, in the same

(K. L. M.) *convicted upon the oath of one or two credible witnesses, by the justice or justices of the peace where such offence is committed as aforesaid, the person or persons so convicted shall forfeit the sum of five pounds; one half to be paid to the informer, and the other half to the poor of the parish where the same was committed; the same to be levied by distress and sale of the offender's goods* (N.) *by warrant under the hand and seal of such justice or justices, before whom such person or persons shall be convicted, as aforesaid; and for want of such distress, the offender or offenders shall be sent to the house of correction* (O.) *for the space of three months for the first offence, and for every such other offence four months.*" 5 Ann. c. 14. the same to be seized.

In *R.* v. *Bellamy*, *E.* 1823, 1 *B.* & *C.* 500., it was held that a conviction on stat. 5 *Ann. c.* 14. § 4. for keeping and using a gun to kill game without being qualified must be made within three lunar months after the offence committed, *post*, p. 560. Conviction to be within three months.

§ 4. (*a*) "*And it shall and may be lawful to and for any of H. M.'s justices of the peace, in their respective counties, ridings, cities, towns corporate or liberty, and the lords and ladies of his, her, their, or any of their respective manors, within the said manors, to take away any such hare, pheasant, partridge, moor, heath-game or grouse, or any other game, from any such higler, chapman, innkeeper, victualler or carrier, or any other person or persons not qualified to kill the same, and shall be found in their custody or possession; and likewise to take away such dogs, nets, or other engines, which shall be in the power or custody of any person or persons not qualified by the laws to keep the same, to their own proper use, without being accountable to any person or persons for the same.*" Justices and lords of manors may take away game, dogs, nets, &c. from unqualified persons.

Bird v. *Dale*, 7 *Taunt.* 560. *T.* 1817. 1 *Moore*, *C. P.* 290. S. C. Upon this latter part of stat. 5 *Ann. c.* 14. § 4. it was decided, that although justices of the peace in their respective counties, and lords and ladies of manors within their manors, may take away any hare, &c. from an unqualified person, either by themselves or others, they must exercise their judgment on the question, in what case it is to be done, and when they have exercised their judgment on the case, and are satisfied that the game is in the hands of an unqualified person, they may use the hands of others to take it; but they cannot delegate to others the jurisdiction given them by this act, of judging whether the person in possession of the game is, or is not a qualified person.

If any person.] A minor may be convicted for all offences under the game laws: he is answerable for all crimes, offences, and trespasses, when he is of sufficient age to distinguish moral right from wrong. But he may be qualified either by estate, or by being the heir apparent of an esquire, or of some person of higher rank. *Christian's G. L.* 191. Minors.

So a married woman may be convicted, if she uses a gun or engines to destroy game; or if she uses a greyhound, setting-dog, or lurcher, not in company with her husband. *Ib.* Feme covert.

She may be qualified by lands in her own right; but her husband's qualification will not qualify her, though hers will give a qualification to her husband. *Ib.*

(*a*) This provision is classed in the "Statutes of the Realm," as 6 *Ann. c.* 16. § 7.

If any person or persons not qualified by the laws of this realm so to do, shall keep or use any greyhounds, &c.]

What an using, &c.

What shall amount to an using of greyhounds, &c. to kill and destroy the game within this act, is always a question of fact to be collected from the whole circumstances accompanying each particular case. As a general proposition, however, it may be safely stated, that a qualified person (who has a certificate) is empowered to take as many of his servants (*e. g.* his groom, *R.* v. *Taylor*, 15 *East*, 480.) or other unqualified persons to attend him, as he thinks necessary, and for the purpose of assisting him in raising the game, without subjecting such servants or unqualified persons either to the penalty of the statute for sporting without a certificate (see stat. 54 *G.* 3. *c.* 141.) or of 5*l.* under the stat. 5 *Ann.* And it has been decided by the court of K. B. (*Lewis* v. *Taylor*, 16 *East*. 49.) (contrary to a decision by *Lawrence* J. at *Stafford Last Assizes*, 1804, which has appeared in former editions of this work) that an unqualified person going out with the qualified owner of greyhounds to course a hare which was killed by the dogs, is not liable to the penalty of 5*l.* under stat. 5 *Ann.* although he took an active part in the sport by beating the bushes in order to find a hare, and after it was killed he alighted from his horse, went over a gate, and took it up. In the case referred to, Lord *Ellenborough* C. J. said, "There is no evidence against this defendant upon the charge of using a greyhound for killing the game. This is not a solitary amusement, and there is nothing to prevent a qualified person from taking others with him to aid him in the pursuit of the game: and he is the person using the dogs: the others have no other use of them than as his servants, and contemplating with him the pleasure of the chase. If indeed an unqualified man used his own greyhound for the purpose of sporting, though in the same company with a qualified person, the case would admit of a different consideration: but there can be no ground for recovering the penalty against this defendant, who

So in *R.* v. *Bleasdale and another*, 4 *T. R.* 809. which was a conviction on stat. *5 Ann. c.* 14. § 4. for using a greyhound to destroy game without being qualified, for which the defendants were convicted in *5l. each*; the *Court*, without hearing any argument, said, the conviction could not be supported, for that it was only one offence, and that the magistrate should only have convicted them in one penalty. And they said that this point had been several times decided; in *Hardyman* v. *Whitacre* (*a*), and in other cases.—Conviction quashed. *5 Ann. c.* 14.

But if they were each using a gun, or each setting a snare, or each had a snare in his pocket, they would each be subject to a penalty; because each is guilty of a distinct, separate, substantive act. *Christian's G. L.* 161.

Pallant v. *Roll*, 2 *Blac. Rep.* 900. Trespass, for that the defendant, being a dissolute person, neglecting his employment, and following hunting and other game, and by no means qualified by law so to do, broke and entered the plaintiff's closes, and with dogs, guns, and other engines for destruction of the game, hunted upon the said closes, trod down the grass, &c. against the form of the statute. On not guilty pleaded, and issue thereon, a verdict was found for the plaintiff at *Bury Assizes*, for 1*s.* damages, subject to the opinion of the court upon the following case. The defendant was not qualified in his own right to kill game, but was, and for three years had been, a menial servant and huntsman to *Robert Leman*, esq. a gentleman of 1500*l.* a-year estate, who had kept hounds for 20 years; and the defendant went out by his master's order with the hounds, his master not being present, and was beating over the plaintiff's grounds. The plaintiff desired the defendant to go off his land, which he refused, and at length found a hare, and hunted it over several pieces of land mentioned in the declaration, two of which were sown with wheat. The question was, Whether, if the court should be of opinion that the defendant is not a dissolute person, or the like, under the statute of *4 & 5 W.* the plaintiff can recover against him in this action upon the statute; or whether he ought to have brought a common action of trespass for breaking his close? *By the Court.*—We have no doubt but that the defendant is not a dissolute person within the meaning of the act. The only real question is, Whether, as this action is framed, the plaintiff can recover any thing? He certainly cannot have his full costs. If he cannot recover any thing but his nonsuit, he must pay costs. If he can recover as upon a common action of trespass, he saves his costs. Now certainly any man might have always brought an action of trespass for hunting upon his ground. For this injury, among others, the statute of *Gloucester* gave costs as well as damages. The statute *22 & 23 C. 2. c.* 9. to prevent vexation lowered the costs, and if less than 40*s.* recovered, gave no more costs than damages. This statute of *4 & 5 W.* 3. restored full costs again, even in case of small damages recovered against dissolute and other persons described in the said statute. But as we are of opinion, that the defendant is not within these descriptions, the offence falls back upon the statute of *C.* 2., whereby the plaintiff shall recover no more costs than

Pallant v. Roll. A huntsman going out with hounds without his master.

(*a*) *Bull. N.P.* 189. This case of *Hardyman* v. *Whitacre* is more fully reported in a note to *Barnard* v. *Gostling*, 2 *East*, 573.

5 Ann. c. 14.

damages. And the verdict was entered by consent, that the jury find the defendant not a dissolute person, but guilty of the trespass; damages 1*s.*, costs 1*s.*

Not qualified by the laws of this realm.] Though it was said in *R.* v. *Matthews*, 10 *Mod.* 26. that it was sufficient to say in a conviction generally that "the defendant was not qualified by the laws of this realm" to keep or to use a dog, &c. for the destruction of game; it has been holden in later cases that it is necessary to negative in the conviction each particular qualification. *See R.* v. *Earnshaw*, *ante*, p. 538.

Each particular qualification must be negatived in the conviction.

R. v. *Hill*, 2 *L. Raym.* 1415. The defendant was convicted for unlawfully keeping a lurcher and a gun to kill and destroy the game, *not being qualified by the laws of this realm so to do.* And the conviction being removed into the K. B. by *certiorari*, was quashed; because it was only averred generally that he was not qualified, and did not aver that the defendant had not the particular qualifications mentioned in the statute, as to degree, estate, and the rest.

The qualifications must be negatively set out.

In *R.* v. *Jarvis*, 1 *Burr.* 148. The conviction set forth that the defendant did unlawfully keep and use, and had in his custody and possession, one setting-dog and setting-net, for the destruction of the game; and that he the said *Jarvis* was not then anywise qualified, empowered, licensed, or authorised, by or according to the laws of this realm to kill game. It was moved to quash this conviction. And by Ld. *Mansfield* C. J. It is now settled by the uniform course of authorities, that the qualifications must be all negatively set out: otherwise the justices have no jurisdiction over the persons killing game, or keeping dogs or engines for the destruction of it. *Denison* J. concurred, and said it was a clear case, and that it was fully settled and established, that in these convictions the want of the particular qualifications mentioned in the 22 & 23 *C.* 2. ought to be negatively set out. If not, the justices have no jurisdiction to convict the defendant as an offender. And the evidence and adjudication ought both of them to be, that he had not the qualifications which are specified in that act, nor any

5 Ann. c. 14.

Keeping and using.

R. v. *Hartley, Cald.* 175. This was a conviction on *5 Ann. c.* 14. for *keeping* and *using* a *greyhound* to kill and destroy the game.— On a rule to show cause why this conviction should not be quashed, it was objected, 1st, That it was not sufficiently stated that there had been an using of the greyhound, (that is) how and in what manner, and for what purpose. 2d, That it was not expressly and positively averred that he had kept and used a *greyhound* at all; being only set forth, that he kept and used a dog *called* a greyhound, but that it might be called so, and yet be another kind of dog; that it might be an *Italian* greyhound, or might be kept for the protection of a house, or other purposes than to kill or destroy the game.—By Ld. *Mansfield* C. J. Convictions must certainly be precise, that the court may see whether the offence committed falls within the jurisdiction of the magistrate; and must be quashed if not so. In this act there are two offences described, a *keeping* and *using*; and the legislature mean, that there may be a keeping to destroy, &c., which is not of necessity to be proved by an using to that purpose; if it were so, it would be tautologous, for such evidence would be a proving of the other offence: the keeping therefore of a thing prohibited being an offence under the act, it is necessary *primâ facie* evidence of a keeping for the purpose prohibited, and it is incumbent upon the defendant to show that it is kept for another purpose, as that in the present case it is a house dog, a favourite dog, or a particular species of greyhound. The description cannot be more precise, unless some particular instance of using is shown, which if keeping of itself constitutes an offence, cannot be necessary. As to the other objection, that the averment is defective in stating only that this was a dog *called* a greyhound, I think it positive enough: it must mean the dog of that species generally known in this country. — The other judges concurred. — Rule discharged, and conviction affirmed.

Read v. *Phelps*, 15 *East*, 271. Upon a motion to set aside a nonsuit in an action upon stat. *5 Ann. c.* 14. for keeping and using a setting-dog to kill and destroy game, which nonsuit was directed, because there was no evidence that the dog had been *used* for killing game, it was said that this evidence was not necessary if from other circumstances the jury might infer that the dog was *kept* for that purpose, the words in the stat. being "*keep* OR *use*:" but the Court without argument refused the rule.

In order to constitute the offence of keeping a setting-dog, within the stat. 5 & 6 Ann. c. 14. § 4. the dog must be kept for the purpose of killing and destroying game; and, therefore, where it appeared that, at the time when the alleged offence was charged to have

Hayward v. *Horner, H.* 2 *G.* 4. *5 B. & A.* 317. Declaration in debt, on the stat. *5 & 6 Ann. c.* 14. § 4. against defendant as an unqualified person, for *keeping*, on different days in *March*, 1821, a setting-dog, to kill and destroy game. Plea, *nil debet*. At the trial, before *Burrough* J. at the last assizes for the county of *Essex*, it was proved by the plaintiff's gamekeeper, that the defendant during the year 1821, had kept a setting-dog, which he had seen him use in 1819. There was no proof that any use had been made of the dog by the defendant during the last season; and on the contrary, his servant proved, that subsequently to the shooting season, which commenced in *September*, 1819, the dog had generally been tied up, and that he had never seen his master take it out into the field after *January*, 1820. It was contended by *Gurney*, for the defendant, on the authority of the case of *Read* v. *Phelps*, 15 *East*, 271. that the mere fact of keeping a sporting dog was not evidence of keeping it for the purpose of destroying

5 Ann. c. 14. Keeping and using.

game; and that in order to constitute an offence within the statute, the dog must be kept for the purpose of killing or destroying game. The learned judge was of opinion, that in an action of this sort it was sufficient to prove the keeping of any of the dogs mentioned in stats. 22 & 23 *Car.* 2. *c.* 25. 4 & 5 *W. & M. c.* 25. and 5 *Ann. c.* 14.; the legislature having considered such dogs to be dogs for the destruction of game. He therefore directed the jury to find a verdict for the plaintiff, with liberty to the defendant to move to enter a nonsuit. A rule *nisi* for that purpose having been obtained in last term, *Marryat* now showed cause. The statute enacts, that an unqualified person who shall keep or use any greyhounds, setting-dog, &c. to kill and destroy game, shall be liable to a penalty. The words, *to kill or destroy game*, apply only to the *using* of the dogs, and not to the mere *keeping*. Two offences are created, one for keeping, the other for using. The statute does not say that the dogs must be kept for the purpose of destroying the game: but to make a party guilty of the offence of using the dog, it must have been used to kill and destroy game. In *Read* v. *Phelps*, 15 *East*, 271., the dog was so young that it could not have been used to kill game. In *Wingfield* v. *Stratford*, *Say.* 15. 1 *Wils.* 315. *Lee* C. J. takes this distinction: "As greyhounds, setting-dogs, &c. are expressly mentioned in this statute, it is not necessary to allege that any of these have been used for killing or destroying game, and the rather as they can scarcely be kept for any other purpose than to kill and destroy game. But as guns are not expressly mentioned, and as a gun may be kept for the defence of a man's house, and for other lawful purposes, it is necessary to allege, in order to its being comprehended within the meaning of the words 'any other engines to kill the game,' that the gun had been used for killing the game." *Gurney*, contrà, was stopped by the Court. — *Abbott* C. J. I am clearly of opinion, that in order to constitute an offence within the stat. 5 & 6 *Ann. c.* 14. § 4. *the dog must be kept or used for the purpose of killing or destroying game.* It did not appear in this case, that at the time

been committed, the dog was tied up, and never went out into the field with its master, this was held not to be an offence within the statute.

ing of dogs for that purpose. This very point arose in the case of *Briarly* v. *Athorpe*, which was tried at the *Lent Assizes*, 1792, before *Buller* J. at *York* (*a*); and he was of opinion, that in order to bring the case within the statute, it was essential that the dog should be kept for the purpose of destroying game. — *Best* J. This is a penal statute, and ought therefore to be construed strictly. The keeping or using a dog of the particular description mentioned in the statute, to kill and destroy the game, constitute two distinct offences; and I am of opinion that *the mere keeping* of such a dog does not constitute an offence, unless it be for the purpose of killing and destroying game. The mere keeping of such a dog may indeed be *primâ facie* evidence of the purpose for which it is kept. In this case, however, it has been considered as conclusive evidence of that purpose. Here there was proof to rebut the *primâ facie* presumption; for it was in evidence, that the dog, during the time in which the offence is laid in the declaration, was generally tied up, and never followed his master. I think, therefore, that in this case there was strong evidence to go to the jury, that the dog was not kept for the purpose of killing and destroying the game, and that the jury would have been warranted in coming to that conclusion. That being so, I think that the rule for entering a nonsuit ought to be made absolute. R. A.

5 Ann. c. 14.

Keeping and using.

Hebden v. *Hentey*, *M.* 60 *G.* 3. 1 *Chitt. Rep.* 607. Action of debt on stat. 5 *Ann. c.* 14. against an unqualified person, to recover penalties for using a gun to kill and destroy game. At the trial before *Holroyd* J. at *Huntingdon Sum. Ass.* 1819, it appeared in evidence that the defendant was the gamekeeper of a manor adjoining to that in which the offence was alleged to have been committed. The defendant had gone into the latter manor, with a gun and dog, and appeared to be beating about for game. The dog had snapped at a hare, and there was a count in the declaration for destroying that hare, the defendant being charged

In an action for penalties on stat. 5 Ann. c. 14. for using a gun to kill and destroy game, held sufficient to prove that the defendant was beating about for game, and pointed his

(*a*) *Briarly* v. *Athorpe*, *Yorkshire Lent Assizes*, 1792. Trover for a pointer-dog, seized by the defendant, lord of the manor and a justice of the peace, as being in the custody of an unqualified person. *Cockell* Sergt., for the plaintiff, insisted, that the defendant had not, either as lord of the manor or as a justice of the peace, a right to seize the dog: first, as not being a setting-dog, nor included within the stat. 5 & 6 *Ann. c.* 14.; secondly, as not being kept for the purpose of killing game, but as a house-dog, and for defence, plaintiff having used the dog to kill game before he sold his estate, which qualified him, but never since, having kept him expressly for the purpose of a house-dog. — *Buller* J. The first question is, Whether a pointer is a setting-dog within the act? I am of opinion a pointer is within the act of parliament. It is a well-known rule, in expounding acts of parliament, to consider all the acts in *pari materia*. Stat. 22 & 23 *Car.* 2. *c.* 25. § 2. mentions "other dogs." A setting-dog, I think, means any dog who *stops* at his game. But it is essential that it must be kept or used to kill game. If not, the word greyhound would extend to an *Italian* greyhound kept by a lady for her amusement. So "hays." There is no difference that I know between hays and a cabbage-net; but keeping a cabbage-net or hays to put over cabbages is not unlawful. It must be kept or used to kill game, to entitle the lord to seize. If you (the jury) think the dog was used to kill game in *September* or *October*, 1790, being since the plaintiff sold his property, there must be a verdict for the defendant; if not, then the plaintiff is entitled to a verdict. Verdict for plaintiff, damages 10*l*. See *Rex* v. *Filer*, 1 *Str.* 496. *Rex* v. *Gardner*, 2 *Str.* 1098. *Rex* v. *Thompson*, 2 *T. R.* 18.

A pointer is within the stat. 5 & 6 Ann. c. 14.

5 Ann. c. 14. gun, though he did not fire at any game. (a)

with having used the dog for that purpose. A covey of birds was put up, and the defendant pointed his gun at them, but he did not fire. Under these circumstances the jury found for the plaintiff. On motion for a rule *nisi* to set aside the verdict, and enter a nonsuit, it was contended, that the evidence in the cause did not satisfy the averment in the declaration, that the defendant "*had used a gun to kill and destroy game*," because, for any thing that appeared, the circumstance of the defendant having pointed his gun was no more than if he had pointed a stick at the game. *Abbott* C. J.—As this question was left to the jury, I do not see how we can disturb the verdict, and certainly there was evidence sufficient to go to them, upon the question whether the defendant had used the gun to kill and destroy game. The generality of that allegation must be coupled with the circumstances proved, and no doubt the learned judge left the case entirely for the consideration of the jury; and as I think he was right in so doing, I am of opinion that we ought to leave the verdict where it is. — *Bayley* J. There was evidence sufficient to go to the jury, whether in fact the defendant was not beating about for game for the purpose of driving it into his own manor, and thereby leaving it within his reach. There are cases which have decided, that it is not necessary to prove that the man actually shot the game, but if he is beating about for game, so as to show an intention on his part to shoot it if he has the opportunity, that is a sufficient using of the gun to support an action upon the stat. of *Ann.* In the case of *King* v. *King* (*b*), *Parker* C. J. held, that walking about with intent to kill game, is evidence of using the instrument for that purpose. In this case there was evidence sufficient to show that the defendant was beating about in the field where he was seen, and using his gun for that purpose. — *Holroyd* J. and *Best* J. were of the same opinion. R. R.

What shall be deemed using.

Use.] In the case of *R.* v. *King*, *Sess. Cas.* 88., *Parker* C. J. said, that walking about with intent to kill game is evidence of

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in the conviction was, that the witness was satisfied that the defendant did keep and use a gun to kill and destroy the game, from the circumstance of his hearing a gun go off, and observing that it was fired by the defendant, who was then walking about a piece of ground with that apparent intent, the court affirmed the conviction. Ld. *Kenyon* C. J. said, *It is sufficient in convictions, if there were such evidence before the magistrate as in an action would be sufficient to be left to a jury*: here we cannot say that there was no evidence of the fact for the consideration of the magistrate. *5 Ann. c. 14.* — what is evidence of using.

Mr. *Christian* (*G. L.* 157, 158.) says, "that in all these cases the justice of the peace himself must be satisfied of the intent, from the circumstances stated by the witnesses. He must be satisfied that the party was in pursuit of game, and not of sparrows, larks, or fieldfares." Even if he were in pursuit of woodcocks, snipes, or rabbits, and not of hares, pheasants, partridges, or grouse, the justice would have no authority to convict *under this statute.*

Any greyhound, setting-dogs, hays, lurchers, tunnels, or any other engine.] *Hooker* v. *Wilks*, 2 *Str.* 1126. An action was brought on stat. 8 *G. c.* 19. for using a *hound* to destroy game. And after a verdict for the plaintiff, the judgment was arrested; for the stat. *5 Ann. c.* 14. has not the word *hound*, and the words *other engine* come after *nets*, and are applicable only to inanimate things. And this being a penal law, cannot be extended. How far penal to keep a hound.

A gamekeeper is not empowered by stat. 22 & 23 *C.* 2. to seize a hound belonging to an unqualified person. *Grant* v. *Hulton*, 1 *B. & A.* 134. Seizing a hound.

So in the case of *Reason* v. *Lisle*, *Com.* 576. In an action for the penalty under this statute, judgment was arrested, because it was stated in the declaration that the defendant did keep and use a dog to kill and destroy the game, without specifying what species of dog; for it might be a mastiff or a lap-dog, and the statute only mentions greyhounds, setting-dogs, and lurchers.

R. v. *Morgan*, *E.* 1788. 2 *Chitt. Rep.* temp. *Ld. Mansfield*, 563. The defendant was convicted on stat. *5 Ann. c.* 14., under a conviction which stated the information to have been, that the defendant "*did kill a hare and destroy the game*," and the evidence to have been, that the defendant "*did, with certain dogs, called hounds and greyhounds, kill and destroy one hare.*" — *Plumer* moved to quash the conviction, on the ground that the offence, as stated in the conviction, was no offence against the *5 Ann. c.* 14. The evidence of itself certainly brought the offence within the meaning of the statute; but the evidence cannot extend the offence further than that stated in the information. The fact charged in the information is, that the "*defendant killed a hare and destroyed the game.*" Now the words of *5 Ann. c.* 14. are prohibitory against *keeping or using a gun*, &c. to kill, and not against *killing*. The defendant, for all that appears in the information, might have accidentally killed the hare. Killing in the night, or in the snow, is an offence against the statute; but then the offence must be so charged. The conviction was admitted to be bad by the other side, and the court ordered the same to be quashed. — Conviction quashed. A conviction under stat. 5 Ann. c. 14. stating in information, that the defendant "killed a hare," is bad.

Any other engine.] *R.* v. *Gardiner*, *Andr.* 255. 2 *Sess. Cas.* 204. 2 *Str.* 1098. 14 *Vin. Abr.* 3. It was moved to quash a conviction, It is necessary to prove the

1 Ann. c. 14.

Actual using of the gun for the purpose of destroying game.

for unlawfully having and keeping a *gun*, being an engine or instrument for destroying the game. And it was urged, that this is no sufficient charge within this act, or any other of the laws relating to the game; for it is not said that the defendant *used* the gun for the destruction of game; and a gun is not an instrument so far appropriated to killing game, as that it is criminal for a person to have one in his custody only: and it would have been altogether as well, if it had been said that the defendant had in his custody a *cane* for the destruction of the game, which may possibly be used for that purpose. The only offences intended to be prevented by the act are, the keeping of engines appropriated to, and which can only be used in, the destroying of game. A gun is an engine, not for the killing of game, but for the defence of a man's house. And the *whole court* were clearly of opinion, that this conviction was not good. For (as they argued) if the statute is to be construed so largely as to extend to the bare having of any instrument that may possibly be used in destroying game, it will be attended with very great inconvenience, there being scarcely any, though ever so useful, but what may be applied to that purpose. And though a gun may be used in destroying game, and when it is so, doth then fall within the words of the act; yet as it is an instrument proper and frequently necessary to be kept and used for other purposes, as the killing of noxious vermin, and the like, it is not the having a gun, without applying it in the destruction of game, that is prohibited by the act; but *otherwise it is of lurchers, hare-pipes, and such like, which are peculiarly fitted or disposed for killing game. The bare keeping of these for the purpose of killing game is sufficient to convict an offender; and it will be incumbent upon the defendant himself to prove that he kept them for other purposes.* And the conviction, therefore, was quashed. After which, *Strange*, Solicitor-general, said, that in the case of *R.* v. *King*, *E.* 3 *G.*, Lord *Macclesfield* said, that he was in the House of Commons when this act was made, and he himself objected to the inserting of the word *gun* therein, because it might be attended with great inconvenience.

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Mr. *Christian*, in his treatise on the Game Laws, p. 193, says, "As a magistrate, I should be very unwilling to proceed to a conviction, where I had not the fullest proof that the party had notice of the charge made against him; and I should certainly never do it, unless I had reason to think that he had absconded, or concealed himself, to avoid being subject to the consequences of the charge or information."

5 Ann. c. 14.

Observations by Mr. Christian.

R. v. *Thomas Spencer Crowther*, 1 *T. R.* 125. This was a conviction before a justice on 5 *Ann. c.* 14. for using a gun. After stating the information, which negatived specifically every one of the qualifications in 22 & 23 *C. 2. c.* 25., and which disclosed the fact of the defendant's having used a gun and pointers, and killed a partridge, it stated a summons and the appearance of the defendant; who "having heard the same, and the aforesaid deposition of the said *E. Tye* having been read over again to the said *E. Tye*, in the presence and hearing of the said *T. S. Crowther*, and the said *E. Tye having again affirmed his said deposition to be true, in the presence and hearing of the said T. S. Crowther*, he the said *T. S. Crowther* is asked by me, the said justice, if he can say any thing for himself, why he, the said *T. S. Crowther*, should not be convicted of the premises above charged upon him in the form aforesaid: Whereupon, &c."—It was moved to quash this conviction on two grounds: 1st, That the evidence on which it was founded was not given in the presence of the defendant, for on his appearing before the justice the witness only *affirmed* his former deposition to be true; and *R.* v. *Vipont*, 2 *Burr.* 1163. was cited. 2dly, The qualifications required by 22 & 23 *C. 2. c.* 25. were not negatived by the evidence. The evidence was only general, that what he did was *against the form of the statute*, &c.; and *R.* v. *Jarvis*, 1 *Burr.* 154., and *R.* v. *Wheatman*, *Dougl.* 345. were cited. —In answer it was said, that the deposition of the witness having been read over in the defendant's presence, and affirmed by him to be true, was the same as if he had been re-sworn. That as to the other objection, the information had negatived every separate qualification, and was so stated in the conviction, and there was no occasion to prove it by evidence. If the information be specific, a general deposition that he is not qualified is sufficient to put the defendant upon proving that he was.—By the Court. The first objection is good: the witness ought to have been re-sworn in the defendant's presence. As to the other point, there is no case in which it has been directly decided, that the *evidence* should negative every particular qualification. It cannot be so from the nature of the case. — Conviction quashed.

The evidence need not negative every particular qualification.

In *R.* v. *Stone*, 1 *East*, 639., Lord *Kenyon* and *Grose* J. were of opinion that the evidence ought to negative each of the qualifications; but the other two judges, *Lawrence* and *Le Blanc* Js., thought it was not necessary to produce further evidence in an information before a magistrate than in an action: and there the witnesses are never required to prove more than the fact of using the dogs and engines; and the *onus probandi* of proving the qualification, as his defence, is always thrown upon the defendant.— The court being equally divided, no order was made.

But in the following case, *R.* v. *Turner*, the court of K. B. determined that the same rule of evidence applies as well to proceedings on informations before magistrates, as to actions for penalties;

5 Ann. c. 14.

and therefore a conviction, which specifically negatives the several qualifications mentioned in the statute, is sufficient, without stating evidence to negative these qualifications.

Upon a conviction under stat. 5 Ann. c. 14. § 2. against a carrier for having game in his possession, it is sufficient if in the information and adjudication, the qualifications mentioned in stat. 22 & 23 C. 2. c. 25. § 3. be negatived, without negativing them in the evidence.

R. v. *Turner*, T. 56 G. 3. 5 *M. & S.* 206. Conviction by two justices upon stat. 5 *Ann. c.* 14. § 2. against a carrier for having game in his possession. The conviction was to this effect; "*W. Taylor*, of the parish, &c. cometh before me, *J. M.*, one of the justices of our lord the king, in and for the county of *Surrey*, &c.; and then and there giveth me, the said justice, to understand and be informed, that within three months now last past, that is to say, on the 5th day of *February*, now instant, at the parish of *Send* and *Ripley*, in the said county, *John Turner*, of the parish of the *Holy Trinity*, in *Guildford*, in the county of *Surrey*, carrier, being a person not then having lands, &c. (negativing the qualifications of the 22 and 23 *Car.* 2. *c.* 25.) nor then being a person in any manner qualified or authorised by the laws of this realm to kill game, and being then and there a carrier, did then and there unlawfully *have in his custody and possession* sixteen pheasants and five hares, the same not being sent up or placed in the hands of the said *J. Turner*, by any person or persons qualified to kill game, contrary to the form of the statute, &c. whereby he hath forfeited the sum of 105*l.*, that is, 5*l.* for each pheasant and hare." And the conviction prays, that the defendant may be summoned to answer the premises, and that the informer may have a moiety of the forfeiture. "Whereupon the defendant being summoned on the 10th of *February*, in the 56th year aforesaid, &c. appeareth before us, the said *J. M.* and *G. M.*, one other of the justices, &c. and having heard, &c. pleads not guilty. Nevertheless, on the said 10th day of *February*, at, &c., two credible witnesses, to wit, *J. T.* and *W. S.* upon their oath affirm, in the presence of the said *J. Turner*, that within three months next before the said information, to wit, on the said 5th day of *February*, in the 56th year aforesaid, at &c., the said *J. Turner* being a carrier, did have in his custody and possession, in his waggon, at the parish of *Send*

months next before the said information was made before me the said *J. M.* by the said *W. T.* as aforesaid, unlawfully had in his custody and possession, sixteen pheasants and five hares, contrary to the form of the statute, &c., and that the same were not sent up or placed in the hands of the said *J. Turner*, by any person or persons qualified to kill game, and that the said *J. Turner* had not then any lands or tenements, or any other estate of inheritance in his own right, or in his wife's right, of the clear yearly value of 100*l. per annum*, &c. (negativing the other qualifications); and thereupon we the said justices do convict the said *J. Turner* of the offence aforesaid, and do adjudge that the said *J. Turner*, for his said offence, hath forfeited the sum of 105*l.*, that is to say, the sum of 5*l.* for each and every of the said pheasants and hares; and we do adjudge, that one half of the said sum be paid to the poor of the parish of *Send* and *Ripley* aforesaid, where the said offence was committed, according to the form of the statute, &c. And now it was argued by *Scarlett* and *Ross*, that the conviction was ill; first, because the justices have neglected to set forth the evidence in support of the information, and have only stated the conclusion which they drew from it. For the justices have repeated the charge alleged in the information, as if it were the evidence given in support of that charge; but it is impossible to conceive that the witnesses should have deposed in the very same form and words as laid in the information. It was incumbent, therefore, on the justices to set forth the particulars of the evidence, and not the result of it, in order that the court may see that there is sufficient to warrant the conviction. Secondly, it was objected, that it does not appear that any evidence was given in support of the information, negativing the qualifications mentioned in the statute, which is necessary in order to found the jurisdiction of the justices; for if the party be qualified in any one respect, the justices have no jurisdiction. And herein a proceeding before a justice differs from an action. It seems, therefore, that *primâ facie* evidence, at least, ought to be required, though it must be admitted, that in *R.* v. *Stone* (1 *East*, 639.), the court were divided in opinion upon this point. — Lord *Ellenborough* C. J. The question is, upon whom the *onus probandi* lies; whether it lies upon the person who affirms a qualification, to prove the affirmative, or upon the informer, who denies any qualification to prove the negative. There are, I think, about ten different heads of qualification enumerated in the statute (22 & 23 *Car.* 2. *c.* 25. § 3.) to which the proof may be applied; and, according to the argument of to-day, every person who lays an information of this sort is bound to give satisfactory evidence before the magistrate to negative the defendant's qualification upon each of those several heads. The argument really comes to this, that there would be a moral impossibility of ever convicting upon such an information. If the informer should establish the negative of any part of these different qualifications, that would be insufficient, because it would be said, *non liquet*, but that the defendant may be qualified under the other. And does not, then, common sense show, that the burden of proof ought to be cast on the person, who, by establishing any one of the qualifications, will be well defended? Is not the statute of *Anne* in effect a prohibition on every person to kill game, unless he brings himself within some one of the qualifications allowed by

5 Ann. c. 14.

5 Ann. c. 14.

law; the proof of which is easy on the one side, but almost impossible on the other? I remember the decision of *R.* v. *Stone;* and the arguments of the learned judges, who held the necessity of giving negative proof, were undoubtedly urged with great force; but I felt at the time, that if they were right, it would in most cases be impossible to convict at all. But in *Spieres* v. *Parker,* (1 *T. R.* 144), I find Ld. *Mansfield* laying down the rule, that in actions upon the game-laws, and I see no good reason why the rule should not be applied to informations as well as actions, the plaintiff must negative the exceptions in the enacting clause, though he throw the burden of proof on the other side. The same was said by *Heath* J. in *Jelfs* v. *Ballard* (1 *Bos. & Pull.* 468.) and such I believe has been the prevailing opinion of the profession and the practice. I am, therefore, of opinion, that this conviction, which specifies negatively in the information the several qualifications mentioned in the statute, is sufficient, without going on to negative, by the evidence, those qualifications. — *Bayley* J. I have always understood it to be a general rule, that if a negative averment be made by one party, which is peculiarly within the knowledge of the other, the party within whose knowledge it lies, and who asserts the affirmative is to prove it, and not he who avers the negative. And if we consider the reason of the thing in this particular case, we cannot but see that it is next to impossible that the witness for the prosecution should be prepared to give any evidence of the defendant's want of qualification. If, indeed, it is to be presumed, that he must be acquainted with the defendant, and with his situation or habits in life, then he might give general evidence what those were; but if, as it is more probable, he is unacquainted with any of these matters, how is he to form any judgment whether he is qualified or not, from his appearance only? Therefore, if the law were to require that the witness should depose negatively to these things, it seems to me that it might lead to the encouragement of much hardihood of swearing. The witness would have to depose to a multitude of facts; he



presumption the other way, that it was there with his knowledge. If the defendant could have shown, by evidence satisfactory to the justices, that he did not know it, that would have presented a very different case; but where the witness has proved that the defendant had it in his custody and possession in his waggon, surely such evidence, being unanswered, warrants this conviction.—*Holroyd* J. (*Abbott* J. was absent.) It is a general rule, that the affirmative is to be proved, and not the negative, of any fact which is stated, unless under peculiar circumstances, where the general rule does not apply. Therefore it must be shown, that this is a case which ought to form an exception to the general rule. Now all the qualifications mentioned in the statute are peculiarly within the knowledge of the party qualified. If he be entitled to any such estate, as the statute requires, he may prove it by his title-deeds, or by receipt of the rents and profits: or if he is son and heir apparent, or servant to any lord or lady of a manor appointed to kill game, it will be a defence. All these qualifications are peculiarly within the knowledge of the party himself, whereas the prosecutor has probably, no means whatever of proving a disqualification. If this be so, instead of saying that the general rule of law ought not to apply to this case, it seems to be the very case to which the rule ought peculiarly to apply. The other objections do not appear to me to be well founded; and, therefore, I think this conviction ought to be affirmed.—Conviction affirmed. 5 Ann. c. 14.

Smyth v. Jefferies. What is sufficient possession of lands to establish a qualification.

Smyth v. *Jefferies*, *E.* 2 *G.* 4. 9 *Price* 257. Action of debt for recovery of penalties for killing game, the defendant not being qualified, &c.—The defendant paid into court 5*l.* for one penalty, and pleaded the general issue.—The cause was tried at *Gloucester*, before Mr. Justice *Park*, when the jury found a verdict for the defendant. *Taunton* now moved for a rule to show cause why that verdict should not be set aside, and a new trial ordered, on the ground that the verdict was not supported by the evidence. He stated, that the only question in the cause upon the trial was, whether the defendant was duly qualified; and the only evidence which he gave of the affirmative was, by producing certain deeds of lease and release, of the 27th and 28th of *March*, 1784; under which, the possession of the defendant's father, who was the purchaser, was proved in a vague and loose manner; but no attempt was made to prove possession by the son, nor were any particulars as to the payment of rent given in evidence, or to whom paid. It was therefore contended, that there was not sufficient proof of the defendant's having a competent estate to qualify him, having to a certain extent admitted that he had not, by the payment of one penalty into court. The learned judge, however, ruled that there was sufficient evidence for the jury; and observed that it was a very unusual thing to proceed in such cases for more than one penalty. The jury returned their verdict for the defendant. It was therefore submitted, that there ought to be a new trial.—*Richards* C. B. I think the evidence was properly left to the jury; and I cannot say, that they have not done right. There does not appear to have been any evidence given, on the part of the plaintiff, to show that the defendant or his ancestor, had parted with the estate, or any thing to rebut the defendant's *primâ facie* case.—*Graham* B. concurred.—*Wood* B. This was an ungracious proceeding; and, in the greater number of these cases, very slight

5 Ann. c. 14.

In a conviction on *5* Ann. c. 14. evidence that the defendant kept and used a gun to kill and destroy the game, held sufficient.

evidence of qualification is generally considered sufficient. *Garrow* B. concurred. — R. R. But see *R.* v. *Turner*, *ante*, 554.

R. v. *Thompson*, 2 *T. R.* 18. This was a conviction on 5 *Ann.* c. 14. § 4. stating, according to the precedent (L) the information on 8th *Dec.* 1786; the appearance of the defendant on the 9th after being summoned, and the plea of *not guilty*, and then proceeded as follows: "Nevertheless, on the said 9th day of *Dec.* in the year aforesaid, at, &c. one credible witness, to wit, *R. Taylor*, of, &c. cometh before me the said justice, and before me the same justice upon his oath, &c. saith that the defendant, on the 7th day of *Dec.* aforesaid, in the year aforesaid, at, &c. (negativing the qualifications of 22 & 23 *C.* 2. *c.* 25. § 3.) *did keep and use a gun to kill and destroy the game;* and thereupon the said defendant, &c., before me the said justice by the oath of one credible witness aforesaid, according to the form of the statute aforesaid, is convicted, and for his offence aforesaid hath forfeited 5*l.* to be distributed, &c."— It was objected, that it did not appear upon the conviction of what the defendant had been convicted: it only said, thereupon the defendant on, &c., before me the same justice, by the oath of one credible witness, according to the form of the statute, is convicted, and for his offence hath forfeited, &c., though this was only a conclusion of law, and not an adjudication of the justice. There was nothing to connect it with that which preceded it; such as that "he is convicted of the premises," or "in manner and form aforesaid."— But the *Court* were clearly of opinion that there was no ground for that objection; but desired it might be argued again on another objection, which they suggested to the counsel, whether the evidence was sufficiently set forth, so that the court could see by what act the defendant had incurred the penalty; for they observed that the act of *keeping a gun* was in itself ambiguous, and it must be shown to be *kept for the purpose of killing game*, in order to bring the party keeping it within the act; it was not like keeping a greyhound or a snare, which could



to *keep* or *use* a gun, unless it be *kept* or *used for the purpose of killing game.* But it is here stated by the evidence, "that the defendant did keep and use a gun to kill and destroy the game." As to the other question respecting *game*, I cannot agree that the witness, in swearing that the defendant used a gun to destroy game would be swearing to a question of law; because it is settled by act of parliament, and every man is bound to know what is game. If he swear that to be game which is not so in law, he would be guilty of perjury. Game must be understood in its legal sense.—*Grose* J. I cannot give my consent to support this conviction. The justice should return particularly all the facts and the conclusion in the conviction; first, the information, the summons, the appearance, or the defendant's default in not appearing; that the information was read to the defendant; that he was asked what he had to plead, the whole of the evidence particularly, and the adjudication. The witness should swear to the *facts* and not to the *law.* 5 Ann. c. 14.

But the next day, when this case was again mentioned, *Grose* J. said,—As the precedent in *Burn*, though it seems to me a faulty one, has been recognised by this court in *R.* v. *Hartley*, of which I was not aware before yesterday, I think it must be supported. It might be highly inconvenient to overturn it; and I should be sorry that any opinion of mine should shake the authority of an established precedent: since it is better for the subject that even faulty precedents should not be shaken than that the law should be uncertain. Cald. 75.

There was another doubt entertained by the court, namely, Whether it sufficiently appeared that the evidence was given in the defendant's presence? but it was overruled.—Conviction affirmed. See *R.* v. *Pearce*, 9 *East.* 358. S. P.

In *R.* v. *Swallow*, 8 *T. R.* 284. It was ruled, that if it be stated on the conviction that the defendant appeared and pleaded, and that the evidence was given on the same day, the court will intend that the evidence was given in the defendant's presence, though the appearance was at *A.* and the evidence given at *B.*

Upon the oath of one or two credible witnesses.] Though the statute directs the conviction to be "*upon the oath of one or two credible witnesses*," without adding, *or by the confession of the offender*; yet a conviction upon his confession before the justice has been held sufficient. *R.* v. *Gage*, 1 *Stra.* 546. 1 *T. R.* 320.—1 *Saund.* 262. (*n.* 1.) And what is still stronger, it has been held that a confession made to others, and not to the justice, if proved by such persons to his satisfaction, in the presence of the defendant, will be sufficient evidence to convict. *Ibid.* Where the defendant confesses the charge, it seems to be sufficient only to state in the conviction the information, the defendant's appearance, the confession, and adjudication. But a confession will extend no farther than to the facts charged in the information; therefore, if the offence be not brought by the information within the act of parliament, upon which the conviction is founded, the defendant's confession will not make the conviction good. *R.* v. *Little*, 1 *Burr.* 605. The conviction may be on the confession of the defendant.

Credible witness.] *R.* v. *Stone*, 2 *Ld. Raym.* 1545. A conviction was quashed because the informer was the witness, divers convictions having been quashed for the same reason before. The same adjudged in the case of *R.* v. *Blaney*, *T.* 11 *G.* 2. *Andr.* 240. And in stat. 2 *G.* 3. *c.* 19. it is recited that in prosecutions on the act The informer cannot be a witness. 2 G. 3. c. 19.

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of 8 *G.* 3. *c.* 19. in the courts of *Westminster*, where a part of the penalty is given to the poor of the parish, the inhabitants of such parish had been disallowed to give evidence; and therefore in that case, to remedy the same, the act gives the whole penalty to the prosecutor, in order to enable the inhabitants to give evidence.

An indictment for killing a hare cannot be maintained.

By the justice.] In *R.* v. *Buck*, 2 *Stra.* 679. the court of K. B. held, that an indictment cannot be supported for killing a hare without a qualification, the 5 *Ann. c.* 14. having appointed a summary proceeding before justices of the peace; nor is it an indictable offence to have nets or guns in possession to kill game. *R.* v. *Towning and others*, *Andr.* 303.—2 *Chitt. G. L.* 1077.

And although for some purposes several persons, by associating in the commission of an illegal act, may become indictable for a conspiracy, yet several persons cannot be indicted at common law for conspiring to kill game; and therefore in *R.* v. *Turner and others*, 13 *East*, 228., where the defendants resolved to go into a preserve, or place set apart for the protection of hares, with arms by night, and take and carry away hares, which they accordingly do, they cannot be indicted for it as for a conspiracy. Ld. *Ellenborough* C. J. said he should be sorry to have it doubted, whether persons agreeing to go and sport upon another's ground, in other words, to commit a civil trespass, should be thereby in peril of an indictment for an offence which would subject them to infamous punishment.

A magistrate ought to take very correct minutes of what passes upon every conviction before him, and he ought carefully to preserve them. *Christian's G. L.* 199.

If a statute authorises a conviction, "provided such conviction be made within ——— months after the offence committed," (as stats. 22 and 23 *C.* 2. *c.* 25., 5 *Ann. c.* 14.) it is not enough that the *information* was within that period, but the *conviction* itself is void if not made within the limited time. And it makes no difference that it was prevented from being so by an adjournment at the request of the defendant himself: for after the time has expired

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which was more than three months after the offence was committed. The conviction was removed into this court by certiorari, in order that it might be quashed. And now, *Adams* argued in support of the conviction. A conviction for selling game under the *5 Ann. c.* 14. § 2. must be made within three months after the offence is committed; but this conviction is founded upon the 4th section of that act, in which no time is limited, within which the conviction is to take place. The words "convicted as aforesaid" in that section refer, not to the conviction in the 2d section, but to the preceding words in the 4th section, viz. the justices before whom the conviction is to take place, and the witnesses by whose testimony the offence is to be proved. The case of *R.* v. *Tolley*, 3 *East*, 467. was a conviction on the 9 *Ann. c.* 25. § 1. by which the conviction is expressly required to be within the time limited by the second section of the *5 Ann. c.* 14. It is not, therefore, an authority in point.—*Denman* contrà. After insisting that the case of *R.* v. *Tolley* was an authority to show that the conviction must be made within three months after the offence is committed, was stopped by the Court.—*Abbott C. J.* I am of opinion that a conviction under the *5 Ann. c.* 14. § 4., must take place within three lunar months after the offence is committed. In this case it did not take place within that time, and therefore must be quashed. The language of the acts of parliament upon the subject of game is by no means free from obscurity. It is our duty, however, to give effect to the intention of the legislature, if that can be ascertained: now I think that the intention is made manifest in this instance, by the different parts of the act in question, and also the subsequent stat. of 9 *Ann. c.* 25. The 5 *Ann. c.* 14. § 2. enacts, "that if any higler, &c. shall have in his possession any hare, pheasant, &c. or shall buy, sell, or offer to sell any hare, &c., every such higler, &c. shall, upon every such offence, be carried before a justice of the peace; and upon view, or upon the oath of one or more credible witnesses, shall be convicted of the same, and shall forfeit for every hare, pheasant, &c. 5*l.*, provided that such conviction be made within three months after such offence committed." The conviction for offences described by that section, must, therefore, take place within three months after the offence is committed. The third section only provides for discoveries. Then the fourth section enacts, "that if any person not qualified so to do, shall keep or use any greyhounds, &c., or other engines, to kill game, and shall be convicted thereof, upon the oath of one or two credible witnesses by the justices of the peace where such offence is committed, *as aforesaid*; the person so convicted shall forfeit the sum of 5*l.*, one-half to be paid to the informer, and the other half to the poor of the parish where the same was committed; the same to be levied by distress and sale of the offender's goods, by warrant under the hand and seal of such justice before whom such person shall be *convicted as aforesaid*." The words "as aforesaid," are twice used in the fourth section, and in both instances refer to "convicted." Now the only mode of conviction before pointed out in the statute, is that mentioned in the second section, and, therefore, by a general reference to that, the fourth section refers as well to the time within which the conviction must take place, as to the other circumstances of it. Indeed no part of the description of the *conviction is* wanted in the fourth section, but

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that of the time within which it is to take place, for it expressly describes the justice before whom, and the witnesses upon whose testimony it is to take place. The fourth section then goes on to enact, " that it may be lawful for any lord of a manor to empower his game-keeper to kill game ; but if the said game-keeper shall, under colour or pretence of the said power and authority to kill, or take the same for the use of such lord, sell and dispose thereof to any person whatsoever, and shall be thereof convicted before any one justice of the peace *as aforesaid*, upon such conviction, such game-keeper shall be committed to the house of correction for the space of three months." Then comes the 9 *Ann. c.* 25. which enacts, " that lords of manors shall appoint but one game-keeper, whose name is to be entered with the clerk of the peace ; and in case any other game-keeper whose name shall not be entered as aforesaid, who shall not be otherwise qualified by the laws to kill game, shall presume to kill any hare, &c. or sell or expose to sale any hare, &c., the offender shall for every such offence incur such forfeiture, pains, and penalties as are inflicted by the recited act upon higlers, &c. for buying and selling game, to be recovered by such means, and in such manner and form, *and within such time*, and to such uses as are prescribed by the said act. It is reasonable to suppose, that when the legislature in the 9 *Ann. c.* 25. imposed upon game-keepers not duly appointed for killing or selling game, the same penalties as the *5 Ann. c.* 14. imposed upon higlers, they understood that the offences mentioned in the *5 Ann. c.* 14. § 4., were subject to the same limitation of time as those described in the second section. For it would be a singular anomaly if it were necessary that a higler or a game-keeper whose certificate was not duly enrolled, should be convicted within three months after the offence committed ; yet, that an unqualified person using a gun to kill game, or a game-keeper selling game without the consent of the lord of the manor by whom he is appointed, might be convicted at any time. — *Bayley J.*

[redacted]

within three months after the offence was committed, and that not having been made within that time, the conviction must be quashed. — *Holroyd* J. I think that the case *R.* v. *Tolley* was rightly decided, but that it is not conclusive upon the present case. That charge was founded on the fourth section of the *5 Ann. c.* 14.; the defence on the 9 *Ann. c.* 25., *viz.* that the defendant was a game-keeper, duly appointed under the provisions of that act. Now the act expressly requires, that where a person acting as game-keeper, but who has not complied with the directions of the act, shall be convicted of killing game, &c., the conviction must take place within the time fixed by *5 Ann. c.* 14. § 2. If, therefore, the fourth section of the *5 Ann. c.* 14. were unlimited as to the time within which a conviction might take place, the 9 *Ann. c.* 25. would be a virtual repeal of it in that particular as to game-keepers. I think, however, that convictions upon *5 Ann. c.* 14. § 4. were always intended to be made within the time specified in the second section. The words, "convicted as aforesaid," must refer to the conviction mentioned in the second section, and that is a conviction of an offence committed within three months. — *Best* J. The words of this statute are very ambiguous. We ought however, in doubtful cases, to construe a penal statute in favour of the persons likely to be affected by it penally. Now it is certainly for the benefit of defendants, that prosecutions for such offences should take place speedily. Their attention should be called to it so as to enable them to make a defence. I am of opinion that the words "convicted as aforesaid," refer to the conviction mentioned in the second section. Besides, in the case of *R.* v. *Tolley*, the same point arose, and it was decided, after argument, that the conviction, not having been made within the three months, could not be supported. — Conviction quashed.

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Shall forfeit 5l.] Q. v. *Matthews*, 10 *Mod.* 26. On a conviction, exception was taken that the person was charged with so many *5l.* as he had killed hares in the same day. And the court was of opinion that the offence for which the statute gave the forfeiture, was the keeping of dogs and engines, and not killing the hares. If a man not qualified go hunting, and kill never so many hares on the same day, he would forfeit but one *5l.* for it is but one offence; but if a man keep dogs, and go hunting several days, and kill hares, if it were thus laid, that he such a day kept dogs and killed, and then again such a day, by laying it thus severally, the offence is severed, and he shall forfeit *5l.* for each offence.

One penalty only can be incurred in one day, though many hares be killed on that day. The offence by stat. is the using dogs, not killing hares.

In *R.* v. *Lovet*, 7 *T. R.* 152. Ld. *Kenyon* C. J. is reported to have said, "If a person go in pursuit of game, with a dog and gun on the same day, he can only be convicted in one penalty. From the report of *Molton* v. *Cheesely*, 1 *Esp.* 123., it might be supposed to have been decided that only one penalty would be incurred under the same act of parliament, but this has been considered as a mistake, and that if two distinct offences be committed against the same act, the defendant will be liable to several penalties. As this defect in the statute, making no distinction as to the quantity of game destroyed, tended to encourage offenders in their violation of the law, a provision was introduced by stat. 9 *Ann. c.* 25. (*post*, p. 567.) subjecting to a penalty of *5l.* for every head of game a person may have in his possession; and thus

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the provisions of the legislature are become complete. 1 *Chitt. G. L.* 86, 87. *See also* 10 *East*, 21. *note* (*a*), *and post*, 571, 572.

A defendant may be convicted of several penalties in the same conviction.

R. v. *Swallow*, 8 *T. R.* 284. This was a conviction in the sum of 15*l.* for three penalties under the game-laws, the defendant being prosecuted for that he, on three several days, kept and used traps and engines to kill game; the objection was, that he was charged with three offences, and the conviction was general, without saying of how many. — The words were, "And thereupon he is convicted, and for his several offences aforesaid hath forfeited the sum of 5*l.* for each offence, making together the sum of 15*l.*, &c. &c." Lord *Kenyon* C. J. said, — There is no objection to the conviction on the ground that the defendant had been convicted of several penalties. It is the constant practice in actions on the game-laws, and not unfrequent in convictions. Even in indictments for capital offences, several offences are sometimes charged, as burglary and stealing in the dwelling-house to the value of 40*s.* I by no means wish that magistrates, in drawing up convictions, should set all forms at nought; but they ought not to be entangled in greater forms and ceremonies than the superior courts. The word "convicted" in this case applies to the several offences with which the defendant was charged, and to the evidence given in support of them; and the words following are, "and for his several offences *aforesaid*, &c." Taking the whole of the adjudication together, it is evident that the magistrate convicted the defendant in the three several offences charged. — Conviction affirmed.

The offence shall be considered to have been committed in the parish in which the person stood when he committed the offence.

To the poor of the parish where the offence was committed.] In some places a man may stand in one parish (or county), and shoot into two or three; in such case the place where the offence was committed is, where the party stood when he shot, and not where the object was which he shot at. *R.* v. *Alsop*, 1 *Show.* 339.

A conviction adjudging a distribution of part of a forfeiture to the overseers of the poor of a *township* (where the statute speaks of a *parish*) cannot be supported. *R.* v. *Priest*, 6 *T. R.* 538.



attachment, yet made a rule to show cause why an information should not go. And on showing cause, the court thought there was enough to excuse the sheriff; but granted it against *Parsons* whose horses were seized, because he knew that the justices had granted this warrant; but it did not appear that the sheriff did. 5 Ann. c. 14.

And in the case of *R.* v. *Monkhouse*, 2 *Stra.* 1184. The court granted an attachment against the under-sheriff of *Cumberland*, for granting a replevin of goods distrained on a conviction for deer-stealing.

And sale.] *Feltham* v. *Terry*, *Bull. N. P.* 131. The defendant levied money by seizing and selling the plaintiff's goods, on a justice's warrant founded on a conviction; which conviction was afterwards quashed. And it was holden that an action for money had and received then lay for the clear money produced by the sale of the goods. See also 1 *T. R.* 387.

If there be goods, they must be destrained upon, before the offender can be committed.

For want of distress the offender shall be sent to the house of correction.] *Hill* v. *Bateman*, before *Raymond* C. J. at *Westminster*. 2 *Stra.* 710. The defendant *Bateman*, being a justice of the peace, had convicted the plaintiff for destroying game, and though (as it was proved) the plaintiff had effects of his own which might have been distrained, which were sufficient to answer the penalty he had incurred, yet the defendant sent him immediately to *Bridewell*, without endeavouring to levy the penalty upon his goods; and an action of trespass and false imprisonment being brought against *Bateman* for this commitment, the C. J. was of opinion, that the action well lay.

A magistrate who convicts an unqualified person of killing game under the stat. 5 Ann. c. 14., and causes his dog to be brought for the purpose of seizing it, may order the dog to be killed without any formal adjudication of seizure.

And any justice or lord may take away such dogs, &c.] *Kingsworth* v. *Bretton and another*. *E.* 54. *G.* 3. 1 *Marsh.* 106. 5 *Taunt.* 416. S. C. This was an action against a magistrate and his clerk, for killing the plaintiff's dog, tried before *Thomson* C. B. at *Maidstone Spring Assizes*, 1814. It appeared that the plaintiff had been convicted of sporting without a qualification, in the penalty of 5*l*. He was then ordered to bring his dog, which he was accustomed to use in killing game, to the magistrate's house, which being done, the dog was, by order of the defendants, after conferring together, shot. It was contended on the part of the defendants, that by stat. 5 *Ann. c.* 14. § 4. they were justified in thus destroying the dog, and the Chief Baron concurring, directed a nonsuit. On motion to set aside this nonsuit, on the ground that though the magistrate might have taken the dog to his own use, he had no right to order it to be shot, it never having been in his possession, so as to vest the property in him; *Gibbs* C. J. said,—"There is no doubt but the magistrate had a right to take the dog into his possession, neither is there any doubt that having so taken it, all the right of the former owner ceased, and the defendants could not be called to an account for any thing done by them afterwards. At the examination of the plaintiff before the magistrate, it appeared that he was unlawfully possessed of the dog, and he was therefore ordered to deliver it up; that being done, the magistrate, after he had communicated with his clerk on the subject, ordered it to be killed; undoubtedly, therefore, he meant to exercise the power which had been given him by the statute." The other judges concurring, the rule was refused.

If the lord of a manor is also a justice of the peace, and he takes away *game, dogs, or engines* from an unqualified person,

5 Ann. c. 14. and an action is afterwards brought against him; he is entitled to notice conformably to stat. 24 *G.* 2. *c.* 44., for it will be presumed he acted as a justice. *Briggs* v. *Sir Frederick Evelyn*, 1 *H. Blac.* 114.

Certiorari. And by stat. 5 *Ann. c.* 14. § 2. [No] *certiorari* shall be allowed to remove the conviction or other proceedings on this act, unless the party convicted shall before the allowance thereof become bound (P) to the prosecutor in 50*l.* with such sureties as the justice before whom the conviction shall be made shall think fit, to pay the prosecutor's full costs and charges, to be ascertained on their oath, in 14 days after the conviction [confirmed], or *procedendo* granted. And in default thereof the justice shall proceed in execution of the conviction in such manner as if no *certiorari* had been awarded.

Recognisance. (a) *Note:* The word [*no*] is inserted instead of the words [*if any*] which are in the act, since that word seemeth necessary to make up the sense; and the word [*confirmed*] is added for the like reason. And indeed there have been too many inadvertencies in the drawing up of this act; for there is false grammar in no fewer than six places, besides other mistakes.

Upon this act there ought to be a single recognisance of the defendant, and two sureties in 50*l.*; and a recognisance taken in 25*l.* each, is not a compliance with the act. *R.* v. *Dunn*, 8 *T. R.* 218.

In a note to the case of *R.* v. *Dunn*, it is made a query, whether the 5 *G.* 2. *c.* 19. § 2. the general *certiorari* act, is applicable to the *certiorari* given by the stat. of *Anne*, since, as it is there observed, the stat. of *G.* 2. refers to judgments and orders, subject to and made upon *appeal*, and the stat. of *Ann.* gives no appeal in this case? (See the stat of *G.* 2. *tit.* Certiorari, Vol. I.) And this doubt expressed by the reporter seems well founded: and if so, the question whether or not a *certiorari* issued upon the stat. of *Ann.* be within time, cannot arise. (K.)

4 & 5 W. 3. c. 23. And by stat. 4 & 5 *W.* 3. *c.* 23. § 3. The constable, authorised by

Or other game.] Rabbits killed in a private warren are not game within this act. 1 *Ld. Raym.* 151. 4 & 5 W. & M. c. 23

And by § 3. If any person so produced, or charged with the said offence, shall not before the justice give such evidence of his innocence as aforesaid, he shall be convicted thereof in the same manner as the person first charged therewith, and so from person to person till the first offender shall be discovered.

By § 7. No *certiorari* shall be allowed to remove any conviction or other proceeding on this act, unless the party convicted first become bound to the person or persons prosecuting, in 50*l.*, with such sufficient sureties as the justice shall think fit, to pay to the said prosecutors within one month after the conviction confirmed, or *procedendo* granted, full costs and charges; and in default thereof, the justice to proceed to the execution of the conviction.

5 Ann. c. 14. Carriers, innkeepers, and others selling or having game in their possession

By stat. 5 *Ann. c.* 14. § 2. If any higler, *chapman* (vide *infra*), carrier, innkeeper, victualler, or alehouse-keeper, shall have in his custody or possession, or shall buy, sell, or offer to sell, any hare, pheasant, partridge, moor, heath-game, or grouse, every such higler, &c. &c. unless such game in the hands of such carrier be sent up by some person qualified, shall be carried before a justice where the offence is committed (Q); and being convicted (R) thereof (in three months after the offence) on view or oath of one witness, he shall forfeit for every hare, pheasant, partridge, moor, heath-game, or grouse, the sum of 5*l.*, half to the informer, and half to the poor of the parish where the offence was committed, to be levied by distress and sale (S.); for want of distress, to be committed (T) to the house of correction for the first offence three months, without bail or mainprize, and for every other offence four months.

What is an exposing to sale.

Exposing to sale.] *Warneford* v. *Kendall*, 10 *East*, 19. Action upon stat. 5 *Ann. c.* 14. for the penalty of 5*l.* against the defendant for *exposing to sale a hare*, not being qualified in his own right to kill game, nor entitled thereto under any person so qualified. It was proved that the plaintiff went out coursing, and killed a hare on *Shipston* manor, when the defendant, who was employed as a carpenter and woodman by Mr. *Earl*, the lord of the manor, and had directions from him to take poachers, came up and took the hare from the dog, and carried it away, notwithstanding the plaintiff claimed it, to Mr. *Earl's* steward, according to his instructions.— Upon the authority of *Molton* v. *Cheeseley*, 1 *Esp.* 123. *Lawrence* J., against his own opinion, allowed a verdict for the plaintiff, with liberty to move to set aside the verdict and enter a nonsuit. A rule *nisi* having been obtained for that purpose, after cause shown, Lord *Ellenborough* C. J. said, the question is whether the *possession* of the defendant was such as to constitute an offence, and subject him to the penalty under the statute? He did not claim the hare as his property, nor acquire the possession of it for himself, but for his master, on whose manor it was taken; and if this be an offence, no case can be stated in which an unqualified person can innocently come in contact with game. The case of *Molton* v. *Cheeseley* (*a*) must have been imperfectly stated. The other judges agreed, and the rule was made absolute.

Certiorari. See 5 *Ann. c.* 14. § 2., *ante*, 566.

(*a*) The fact proved there was, that a pheasant had been killed by accident by the defendant's *dog; and the defendant* had afterwards carried it away. Two

5 Ann. c. 14.

In an information on stat. 5 Ann. c. 14. § 2. against a carrier between Norwich and London, for having game in his possession as carrier, it is not necessary to aver that the defendant is not a person qualified to kill game, nor that he had the game in his possession knowingly. The evidence for the prosecution was, that game was found in the defendant's waggon at an intermediate place between Norwich and London: Held, that there was sufficient primâ facie evidence that the defendant had it in his possession as carrier. The

R. v. *Samuel Clark Marsh*, *E.* 5 *G.* 4. 2 *B.* & *C.* 717. This was a conviction against a carrier, for having game in his possession. The conviction stated, that *Edward Howell*, of *Thetford*, *St. Peter's*, in the county of *Norfolk*, came before *A. B.* and *C. D.*, justices, and gave them to understand and be informed, that within three months last past, *viz.* on *August* 25th, 1823, *Samuel Clark Marsh*, of the city of *Norwich*, being a common carrier, unlawfully had in his hands and custody, and possession as such carrier, divers, to wit, 22 partridges and 22 pheasants of the game of *England* (such partridges and pheasants not having been sent up nor delivered nor entrusted to the said *S. C. Marsh*, as such carrier as aforesaid, or in anywise howsoever, by any person or persons, in any manner qualified to kill game,) contrary to the statute, &c. The conviction then stated the summons of the defendant, his appearance, and that he pleaded not guilty. The following evidence, given by two witnesses for the prosecution, was then set out; that defendant was a common carrier, and that his waggon stopped in the parish of *Elden*, in the county of *Suffolk*, and that 22 live pheasants, two live partridges, and 20 dead ones, were in the waggon, and in the possession of the defendant, as such common carrier. The conviction then set out the evidence of one *John Cole*, a witness for the defendant, who stated, that he was in the employment of the defendant, as book-keeper, on the day in question; that his master's waggon stopped that day at *Thetford*, on its way to *London*, and that he, *Cole*, saw the waggon at about six o'clock in the evening; that it stopped about an hour afterwards; that he saw nothing put into it, except a parcel, which he booked (which was not the parcel in question); that the waggon had been in *Thetford* some time before he saw it, and that he did not know what might have been put into it before he saw it; that *James Smith* was the driver of the said waggon, who was accustomed to drive it; that he had not seen him since that time; that one *Evans* was with the said *James Smith* as

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said *S. C. Marsh*; that he and his father had been book-keepers to *S. C. Marsh* for forty years before. The conviction then stated, that inasmuch as the defendant had not adduced any evidence of the said pheasants and partridges having been sent as aforesaid, by any person or persons qualified to kill game, nor any evidence that the defendant was qualified, by the laws of the realm, to kill or destroy game, or to have the said pheasants or partridges in his possession as aforesaid; it appeared to the justices that the defendant was guilty of the premises charged upon him in the information, and that they therefore adjudged him guilty of the offence. *Nolan* and *Chitty* were to have argued in support of the conviction, but the Court called upon *Scarlet, contrâ*, who contended, that the information ought to have negatived the qualification of the defendant, and also to have averred that he had the game in his possession *knowingly*. As to the first objection, the uniform course of the precedents of convictions against carriers is to negative the qualification. *R.* v. *Turner, ante*, p. 554. It is consistent with this information, that the carrier in this case may have been a qualified person, and may actually have sent his own game by his own waggon; and if so, he clearly would not have committed an offence within the act. — [*Abbott* C. J. Then he would not have had the game in his possession *as carrier*. — *Bayley* J. The effect of your argument is, that if the carrier be qualified to kill game, he may carry the game of any person whatever; whereas the *5 Anne, c.* 14. § 2. declares, "that any carrier having game in his possession is guilty of an offence, unless it be sent by a qualified person."] The information ought to have alleged, that the defendant had the game in his possession *knowingly*. The fact of his having it in his possession without knowledge, cannot be an offence. Thirdly, the evidence does not show that he had it in his possession *knowingly*. The bare fact of the goods having been found in his waggon is not *primâ facie* evidence that he knew them to be there, and the knowledge of the servant is not sufficient, for a master is not criminally responsible for the acts of his servants; and there is no evidence to show that the parcel was put into the waggon at *Norwich*, where the defendant resided; and if it were put in at an intermediate place, it is impossible that he could have any knowledge of it. — *Abbott* C. J. I am of opinion that this conviction ought to be affirmed. Two objections have been taken to the form of the information. The first is, that it does not negative the qualification of the defendant. The second is, that it does not aver that the defendant had the game in his possession *knowingly*. As to the first objection, I am of opinion that it is unnecessary in an information against the carrier to negative the qualifications of the defendant. For, whether he be qualified or not, if he has the game in his possession in the course of his trade and business as carrier, it is an offence within the act. If that were not so, an unqualified carrier would incur the penalty by carrying the game of other people not qualified, and a qualified carrier would not, although each were doing the very same act. It is the act of carrying the game of persons not qualified that constitutes the offence. As to the second objection, I am of opinion that it is not necessary that the information should allege that the defendant had the

dence did not vary the case, and that the defendant was properly convicted of having the game in his possession as carrier.

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game in his possession *knowingly*. The *5 Anne, c.* 14. § 2. has no such word. It merely says, "if the carrier have any pheasant in his possession, he shall be convicted." If it were necessary to aver that the defendant had actual knowledge, it would cast on the prosecutor a burden of proof which could not easily be satisfied, particularly as the carriers themselves usually residing in one place, cannot have any actual knowledge of that which may be done by their servants in the c rse of a long journey. I am of opinion that it is not a sufficient defence for a carrier, in any case of this description, to show that he did not know that the particular parcel contained game, although it might be a good defence to show that it was put into the waggon by the servant for his own benefit, and contrary to the orders of, and in fraud of his master. As to the evidence, that was entirely for the consideration of the justices; but I think there was sufficient evidence to justify the conviction. It appeared that the hampers containing the game were in the defendant's possession, in his waggon employed in his business. That was, therefore, *primâ facie* evidence that the game was in his possession *as carrier*. And that was not rebutted by the evidence given for the defendant. For it appears merely that the book-keeper at *Thetford*, at an intermediate place between *Norwich* and *London*, did not know of any game having been put into the waggon there. The *Norwich* way-bill was not produced, and the game may therefore have been put into the waggon at *Norwich* with the actual knowledge of the defendant. Neither the waggoner nor his helper was called as a witness. The evidence for the defendant left the case, therefore, just where the evidence for the prosecution left it. That being so, I am of opinion that there was evidence that the defendant had the game in his possession *as carrier*, and therefore, that this conviction ought to be affirmed. — *Bayley* J. The general rule as to convictions is this. The information must bring the case within the clause imposing the penalty. If that contained

ggon contrary to the order of the defendant, and for the benefit his servant; and no such evidence having been given, I think defendant was properly convicted. — *Littledale* J. I am of ıion, that it is not necessary in an information against a rier for having game in his possession to negative the qualition of the defendant. The *5 Anne, c.* 14. § 2. creates this nce, and it does not except the case of a carrier who is himself lified to kill game. The clause does contain one exception, that shows that it was not intended that any other exception uld be allowed. I think, therefore, that it would not be any ence to a charge against a person for having game in his posıion as a carrier, to show that he was a person qualified to kill ıe. If he could show, indeed, that it was his own game, that ıld negative the fact of his having it in his possession in his ıracter of a common carrier. The fourth section makes it an nce for persons not qualified to keep greyhounds, &c. or other ines to kill or destroy game, but nothing is said in the second tion as to the qualification. I doubt much whether it would any defence upon the merits that the defendant himself did know that the particular parcel contained game. A master in ıe cases is answerable criminally for the act of his servant, en the act is done by the servant for the benefit of the master and the course of his employment. Thus, if a servant in the course his employment sells a libel, the master is subject to an indictnt. I think that, in this case, the master was properly conted. The game was found in his waggon, employed in the ırse of his business as a carrier. That raises a presumption *mâ facie*, that he knew it was there, and that is not rebutted by evidence given on the part of the defendant. Generally aking, it is sufficient in an indictment or a declaration founded on a statute, to pursue the words of the statute. Thus in an ion of debt for using a gun with intent to destroy game, is sufficient to aver generally that the defendant is not a alified person. It has been held necessary, indeed, to negative informations the particular qualifications. It is not necessary enquire whether that rule were wisely introduced or not, for word *knowingly* is not in the act at all. Therefore, according the rule above laid down, it need not be stated in the informan. For these reasons I am of opinion the conviction ought to affirmed. — Conviction affirmed.

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See tit. Certiorari, Vol. I. as to the mode of obtaining a *certiorari*.

By stat. 9 *Ann. c.* 25. § 2. If any hare, pheasant, partridge, moor, ath-game, or grouse, shall be found in the shop, house, or possion of any person whatsoever, not qualified in his own right to game, or being entitled thereto under some person so quaed, the same shall be adjudged and taken to be an exposing reof to sale within the true intent and meaning of this act, and the stat. *5 Ann. c.* 14. See *R.* v. *Bellamy, ante*, p. 560.

9 Ann. c. 25. An unqualified person having game in possession or exposing to sale.

By stat. 28 *G.* 2. *c.* 12. § 1. (After reciting that doubts had sen with respect to the meaning of the word "*chapman*" in the t. of *5 Ann. c.* 14.) — it is enacted, that if any person or persons atever, whether qualified or not to kill game, shall sell, expose, offer to sale any hare, pheasant, partridge, moor, heath-game, grouse, every such person or persons shall for every such offence

28 G. 2. c. 12. Selling game.

28 G. 2. c. 12. be subject and liable to the same forfeitures, pains, and penalties, as are inflicted by the said act upon higlers, chapmen, &c. for buying, selling, or offering of game to sale.

Game found in possession of poulterer, &c. § 2. If any hare, pheasant, partridge, moor, heath-game, or grouse shall be found in the shop, house, or possession, of any poulterer, salesman, fishmonger, cook, or pastry-cook, it shall be deemed an exposing thereof to sale, within the meaning of this act, and of stat. 5 *Ann.* c. 14., and the forfeitures may be recovered, and penalties inflicted, as under stat. 5 *Ann.* or any other act since made for the preservation of the game.

5 Ann. c. 14. And by stat. 5 *Ann.* c. 14. § 4. Any justice of the peace, in his county, &c. and lord within his manor, may take away any such hare, pheasant, partridge, moor, heath-game, or grouse, or any other game from any such higler, chapman, innkeeper, victualler, or carrier, or any other person not qualified (*a*) [which] shall be found in his custody or possession.

Offenders may inform. § 3. "And for the better discovery of any such higler, chapman, carrier, innkeeper, alehouse-keeper, and victualler, as shall offer to buy or sell any hare, pheasant, partridge, moor, heath-game, or grouse, it is enacted, that any person that shall destroy, sell, or buy any hare, pheasant, moor, heath-game, or grouse, and shall within three months make discovery of any higler, chapman, carrier, innkeeper, alehouse-keeper, or victualler, that hath bought or sold, or offered to buy or sell, or had in their possession, any hare, pheasant, partridge, moor, heath-game, or grouse, so as any one shall be convicted thereof: such discoverer to be discharged of the pains and penalties hereby enacted for killing or selling such game, [and] shall receive the same benefit or advantage as any other informer shall be entitled to by virtue of this act, for such discovery and informations."

4 & 5 W. 3. c. 23. Inferior tradesmen killing game. By stat. 4 & 5 *W.* 3. *c.* 23. § 10. Whereas great mischiefs do ensue by inferior tradesmen, apprentices, and other dissolute persons, neglecting their trades and employments, who follow hunting, fish-

Using Snares to destroy.

An unqualified person, by the orders and in the presence of his master, a qualified person, set on his master's grounds a trap for hares, &c. and afterwards finding a hare therein, carried it according to order to his master, who was not present when the hare was found: Held, that the defendant was not liable to the penalties for using snares to destroy game, or for exposing game to sale.

Walker v. *Mills*. *E.* 1 *G.* 4. 2 *Brod.* & *Bing.* 1. Debt to ecover penalties, on 5th *Anne*, *c.* 14. § 4., and 9th *Anne*, *c.* 25. 2., for using a snare to destroy game (the defendant not being ualified), and for exposing a hare to sale. Plea general issue. he following facts were proved before *Garrow* B. at the last *Sussex Assizes*. The defendant, a cottager in the employ of a ualified person, was on *Sunday* morning found with a hare in is possession, which he had just taken out of a trap placed on his aster's property. The master stated, that the trap was placed here on the *Thursday* preceding by his direction, and in his preence, for the purpose of catching hares and rabbits which had nnoyed him; that the defendant had received orders from him to ring to his (the master's) residence, whatever might be caught n the trap, and that the defendant had, accordingly, brought the are in question to him on the *Sunday* morning on which it was een in the defendant's possession. The learned judge thought he point new, but having directed the jury that this resembled he case of a qualified person attended by persons unqualified, ssisting him in the operations of sporting; that the defendant as acting as servant to his master, and under his directions; and hat, therefore, the possession of the hare by the servant must be aken to be the possession of the master; the jury found a verdict or the defendant. On motion for a new trial, it was contended hat the result of the various cases on this subject was, that the ight of a person qualified to kill game did not extend to the rotection of persons unqualified, unless the qualified person were ctually present; and that a qualified person had no right to send ut one unqualified to kill game for him; that the master, in this ase, though present at the setting of the trap, was absent when he hare was caught and found in the defendant's possession, and hat such possession constituted an exposure to sale, under the *Ann.* *c.* 25. § 2.; and *Molton* v. *Cheeseley* (1 *Esp.* 123.) was ited. — *Dallas* C. J. Cases of this sort frequently run into very ice distinctions, and I would not hastily lay down a general rule hich might afterwards be open to objection. If I had any doubt, would look into the cases that have been referred to; but I ve none: nor have I any hesitation in saying, that this action is ot improperly brought. For what are the circumstances of this se? The defendant was the servant of a qualified man, who, ding his land annoyed by hares and rabbits, ordered this trap be set, with a view to their destruction. I take it to be perctly clear, that a qualified person has a right to order a trap to set for such a purpose, even in his absence; but, in this case, a qualified person was present, and superintended the setting of e trap. In this trap the hare was afterwards caught, and the tching was a catching by the master on his own land. Then as the possession, the master ordered, that whatever was caught ould be brought to him: the hare was brought the moment it as taken, and the possession of the servant in the act of taking e hare to his master, was under the master's direction, and the me as the possession of the master. — *Burrough* J. Actions of is kind do a great deal of mischief; there was no pretence for

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charging this defendant with an illegal taking or possession. — *Richardson* J. The trap being set by the master's order, and in his presence, the hare was in effect caught by him. As to the possession, it was proved that he ordered his servant to bring to him whatever might be taken; so that the case falls within the principle of *Warneford* v. *Kendall*, (10 *East*, 19., *ante*, p. 567.) The learned judge also referred to *Spurrier* v. *Vale*, (10 *East*, 413., *post*, 585.)

58 G. 3. c. 75.

By stat. 58 *G.* 3. *c.* 75. after reciting, that "whereas the selling, exposing, or offering to sale, any hare, pheasant, partridge, moor, heath-game, or grouse, is by law prohibited: And whereas it is expedient, for the more effectual prevention of offences connected with the unlawful destruction and sale of game, to provide by law as hereinafter is enacted;" it is therefore enacted, "that if any person or persons whatsoever, whether qualified or not qualified to kill game, shall buy any hare, pheasant, partridge, moor, heath-game, or grouse, every such person or persons who shall so offend, and thereof shall be convicted before any one or more justice or justices of the peace, magistrate or magistrates, acting for the county, riding, city, town, borough, division, or place where such offence shall be committed, by the oath of one or more credible witness or witnesses, shall for every hare, pheasant, partridge, moor, heath-game, or grouse, so bought as aforesaid, forfeit and pay the sum of 5*l*., one half to be paid to the informer, and the other to the poor of the parish where such offence shall be committed; the same to be levied by distress and sale of the offender's goods, by warrant under the hand and seal of the justice and justices, magistrate or magistrates, before whom the offender shall be convicted, rendering the overplus of such distress or sale (if any) to the party or parties, after deducting the charges of making the same; provided that such conviction be made within six calendar months after such offence committed."

Penalty on any persons buying game.

For the better

§ 2. "And for the better discovery of such person or persons

§ 3. "Wheresoever any person shall, for any offence to be committed against the provisions of this act, be liable to any forfeiture or penalty upon conviction before any justice or justices, magistrate or magistrates as aforesaid, it shall and may be lawful for any other person whatsoever, either to proceed to recover the said forfeiture or penalty by information and conviction as aforesaid, or to sue for and recover the whole of such penalty for his own use by action of debt or on the case, bill, plaint, or information, in any of his majesty's courts of record, wherein no essoign, wager of law, or more than one imparlance shall be allowed, and wherein the plaintiff, if he recovers, shall have his double costs; and no part of the said penalty recovered in any such suit or action shall be paid or applied to or for the use of the poor of the parish wherein such offence shall be committed: Provided always, that no such action, suit, bill, plaint, or information shall be brought or exhibited, but within the space of six calendar months next after the offence committed; and that in case of any second prosecution for one offence, the person doubly prosecuted may plead in his defence the former prosecution pending, or the conviction or judgment thereupon had." 58 G.3. c.75. Penalties under this act may be sued for to the sole use of prosecutor.

In a recent case upon the construction of this statute, the court of K. B. decided that a sale of pheasants kept in pens for breeding was prohibited; and that by a contract for such sale no property passed to the purchaser. *Helps* v. *Glenister*, 8 *Barn. & Cress. Rep.* 553. The selling of tame pheasants is prohibited.

By the yearly mutiny acts, if any officer or soldier shall, without leave of the lord of the manor under his hand and seal, destroy any hare, coney, pheasant, partridge, pigeon, or other fowl, poultry, or fish, or his majesty's game, and be convicted thereof on oath of one witness before one justice, every officer so offending shall forfeit *5l.* to the poor, and the commanding officer upon the place, for every offence committed by any soldier under his command, shall forfeit *20s.* in like manner. And if, upon conviction by the justices, and demand thereof made by the constables or overseers of the poor, he shall not in two days pay the said penalties, he shall forfeit his commission. Mutiny act. Soldiers.

Stat. 33 *H.* 8. *c.* 6. concerning shooting in cross-bows, handguns, hagbuts, or demihakes, although not repealed, seemeth now to be obsolete, and superseded as it were by several subsequent statutes, and a matter more of curiosity than of use; therefore, it is thought unnecessary to insert it here, but to refer the reader to the statute itself. The statute of 33 H.8. concerning shooting in cross-bows, handguns, &c.

IV. Certificate to be taken out.

By stat. 24 *G.* 3. *sess.* 2. *c.* 43. a stamp-duty of *2l.* 2*s.* was imposed on game-certificates. 24 G.3. sess.2. c.43.

By stat. 25 *G.* 3. *c.* 50. the above duty is repealed, and a fresh stamp-duty of *2l.* 2*s.* imposed. Stamp duties.

By stat. 48 *G.* 3. *c.* 55. this duty was increased to *3l.* 3*s.* and by stat. 52 *G.* 3. *c.* 93. to *3l.* 13*s.* 6*d.*

By stat. 7 & 8 *G.* 4. *c.* 49. Persons who have procured game-certificates in *G. B.*, are exempted from the duty on game-certificates in *Ireland*; and persons who have paid the duty on game-certifi- 7&8G.4. c.49.

cates in *Ireland* are authorised to kill game in *G. B.* on paying the difference between the *Irish* and *English* duties.

Stat. 52 G. 3. § 93. Sch. (L).

52 G.3. c.93. *A schedule of the duties payable in respect of killing game.*

	£	s.	d.
" Upon every person who shall use any dog, gun, net, or other engine, for the purpose of taking or killing any game whatever, or any woodcock, snipe, quail, or landrail, or any conies, or shall take or kill by any means whatever, or shall assist in any manner in the taking or killing by any means whatever, any game or any woodcocks, snipe, quail, or landrail, or any coney, by virtue of any deputation or appointment, duly registered or entered as gamekeeper for any manor or royalty in *England*, *Wales*, or *Berwick-upon-Tweed*, or for any lands in *Scotland*:			
If such persons shall be a servant to any person duly charged in respect of such servant to the duties granted on servants in schedule (C), No. 1. there shall be charged in respect of every such person acting by virtue of such deputation or appointment, the annual sum of - - - - - -	0	4	0
48 G.3.c.55. In addition to the duty of 1*l.* 1*s.* granted in respect of such person by the act passed in the 48th year of the reign of his present majesty.			
And where the duty granted by the said act shall not be chargeable in respect of such person, the annual sum of - - - - - - -	1	5	0
And if such person as last aforesaid shall not be a servant for whom the said duties on servants shall be charged, there shall be charged in respect of every such person acting by virtue of such deputation or appointment, the annual sum of	0	10	6

any means whatever, any game, or any woodcock, snipe, quail, or landrail, or any coney, there shall be charged the annual sum of - - - - £ 0 10 6 s. d. 52 G. 3. c. 93.

In addition to the like duty of 3*l.* 3*s.* granted by the said act.

And where the duty granted by the said act shall not be chargeable upon such person, the annual sum of - 3 13 6

Exceptions to the above duties.

I.—The taking of woodcocks and snipes with nets or springes.

II.—The taking or destroying of conies by the proprietors of warrens, or on any enclosed ground whatever, or by the tenants of lands, either by himself, herself, or themselves, or by his, her, or their directions or command.

Rules for charging the last-mentioned duties.

I.—Every person who intends to use or shall use at any time after the fifth day of *April* one thousand eight hundred and thirteen, any dog, gun, net, or other engine, for any of the purposes mentioned in the schedule to this act annexed, marked (L), shall before he shall so use the same, in any year, and every person who intends to take or kill, or to assist in the taking or killing any game, woodcock, snipe, quail, landrail, or coney, shall, before he shall so take or kill, or assist in the taking or killing the same, pay or cause to be paid in each year, unto the collectors of the duties mentioned or referred to in the other schedules of this act, for the parish, ward, or place where he shall reside, if in *England*, or to the collector of the like duties, or his deputy or sub-collector for the shire, county, borough, or place where he shall reside, if in *Scotland*, or one of them, respectively as aforesaid, for the time being, the duty hereby made payable, and shall obtain a certificate thereof in the manner herein-directed, which certificate shall continue in force until and upon the fifth day of *April* next after the time of issuing the same, and no longer. Rules.

II.—Every collector, or his deputy or sub-collector, on application to him made by any person residing within the limits of his collection, and on payment to such collector, or his deputy or sub-collector, of the duty hereby made payable, shall give a receipt for the same, which receipt shall be signed by such collector, or his deputy or sub-collector, and made out conformable to such of the forms for certificates in the schedules to this act annexed, as the case may require; and every such receipt shall be a charge on the parish or place for which such collector, or his deputy or sub-collector, shall be appointed, for the sum therein expressed, in like manner and to the like effect as if the said sum had been previously assessed and levied by such collector, or his deputy or sub-collector, under the warrant of the commissioners acting in the execution of this act, for which receipt the said collector, or his deputy or sub-collector, shall be entitled to demand and receive from such person the sum of one shilling over and above the said duty, and no more, which sum shall be deemed the compensation to such collector, and his deputy or sub-collector, for his pains and care in executing this act; and the duty so received shall be paid to the receiver-general, or his deputy, at his or their next receipt of duties, in full and without deduction: Provided that the receipt

52 G. 3. c. 93. given for the duties contained in this schedule shall not be liable to any stamp-duty whatever.

III. — Every such receipt, being delivered to the clerk of the commissioners acting for the district where the person aforesaid shall reside, shall be exchanged for a certificate made out in one of the forms in the schedule to this act annexed, marked (N), corresponding with such receipt, which certificate the said clerk is hereby required, on demand, to make out and deliver *gratis* to such person, in exchange for the said receipt.

IV. — The receipts so exchanged to be entered by the clerks in books for that purpose, and being examined by the commissioners, shall be a sufficient authority to cause an assesment to be made on the persons mentioned in such receipts in the sums paid by them, which assessments shall be as binding on the collectors, and others acting in the execution of this act, and on the parishes for which such collectors shall have been appointed, as any assessment to be made by the commissioners under the acts; and the commissioners shall return duplicates to the receiver-general, and to the commissioners of taxes.

V. — The commissioners for taxes shall cause forms and receipts to be distributed amongst the clerks, and by them to the collectors.

VI. — Appoints surveyor of the district to execute the duty of a clerk, where no clerk is appointed.

VII. — If a deputation to a servant is revoked in the midst of a year, the master or mistress may obtain a renewed certificate for a servant, free from any duty or fee.

VIII. — The commissioners for the affairs of taxes shall once, or oftener, in every year, as soon as conveniently may be, after such certificate shall have been issued, cause the names and residences of the several persons to or for whom such certificates have been granted for that year, in each county in *Great Britain*, distinguishing the persons acting under any deputations or appointments from

the precincts or limits of the manor, royalty, or lands for which such deputation or appointment was made or granted. 52 G.3. c.93.

XI. — If any person shall be discovered doing any act whatever, in respect whereof such person shall be chargeable as aforesaid, by any assessor or collector of the parish where any such person shall then be, or by any commissioner for the execution of this act, acting for the county, riding, division, or place, in which such person shall then be, or by any lord or lady, or gamekeeper, of the manor, royalty, or lands, wherein such person shall then be, or by any inspector or surveyor of taxes, acting in the execution of the said acts or this act, for the district in which such person shall then be, or by any person duly assessed to the duties granted in this schedule, or consolidated therewith, or by the owner, landlord, lessee, or occupier of the land in which such person shall then be, it shall be lawful for such assessor, collector, commissioner, or gamekeeper, inspector, or surveyor, or other person as aforesaid, or such owner, landlord, lessee, or occupier of land as aforesaid, to demand and require, from the person so acting, the production of a certificate issued to him for that purpose, which certificate every such person is hereby required to produce to the person so demanding the same, and to permit him to read the same, and (if he shall think fit) to take a copy thereof, or any part thereof: or in case no such certificate shall be produced to the person demanding the same as aforesaid, then it shall be lawful for the person having made such demand to require the person so acting forthwith to declare to him his Christian and surname, and place of residence, and the parish or place (if any) in which he shall have been assessed to the duties by this act granted or consolidated therewith; and if any such person shall, after such demand made, wilfully refuse to produce and show a certificate issued to him for that purpose, or in default thereof as aforesaid, to give into the person so demanding the same his Christian and surname, and place of residence, and the parish or place (if any) in which he shall have been assessed, or shall produce any false or fictitious certificate, or give any false or fictitious name, place of residence, or place of assessment, every such person shall forfeit and pay the sum of 20*l.* (B), to be sued for, recovered, and applied in the manner hereinafter directed. (*a*)

XII.—If any person or persons shall, after the fifth day of *April* one thousand eight hundred and thirteen, in *England* or *Wales*, or after the twenty-fourth day of *May* one thousand eight hundred and thirteen, in *Scotland*, do any act for any of the purposes mentioned in this schedule, without having obtained such certificate as is directed by this act, in order to an assessment for the year wherein such person or persons shall so act, every such person shall forfeit and pay the sum of 20*l.* (C.), to be sued for, recovered, and applied in the manner hereinafter directed; and every such offender shall also be liable to the payment to his majesty, his heirs or successors, to the full duty of 3*l.* 13*s.* 6*d.* sterling, over and above the said penalty to be charged in the assessment of the parish or place where the offence shall be committed, by way of increased charge by the inspector or surveyor of the said parish or place: Penalty, 20*l.*

(*a*) *See Molton* v. *Rogers*, 4 *Esp.* 215.

52 G.3. c.93.

which increased charge may be made at any time within six calendar months after the duty shall have accrued, and the said charge shall be allowed by two commissioners, according to the directions of the acts relating to the duties of assessed taxes, subject to appeal whenever such commissioners shall appoint the time and place for hearing and determining the said appeal.

Two commissioners, or one justice being also a commissioner.

XIII.—It shall be lawful for any two commissioners for executing this act, or for any one justice of the peace of the county, riding, or division, or the shire or stewartry, or for any city, borough, liberty, or place wherein any offence or offences mentioned or described in this schedule shall be committed, such justice being also a commissioner for executing this act; and he and they is and are hereby required, upon information or complaint (B) (C) to him or them made of any such offence or offences committed within the district where he or they shall act as such commissioner or commissioners, within three calendar months after the offence shall be committed, to summon (D) the person or persons accused, and also the witnesses on either side, to appear before him or them; and upon the appearance of the person or persons accused, or in default of his or their appearance according to such summons, to proceed to hear and determine the matter in a summary way; and upon due proof made thereof, either by the voluntary confession of the person or persons accused, or by the oath of one or more credible witness or witnesses, to give judgment for the penalty or penalties, or for such part thereof, to which part thereof the said commissioners or justice shall think proper to mitigate the same (the same not being in any case mitigated to less than one moiety of the said penalty or penalties); and in default of payment of the same at the time of conviction, to award and issue his or their warrant or warrants (F), under his or their hand and seal, or hands and seals, for levying the penalty or penalties so adjudged, together with the reasonable costs and charges attending the same, as hereinafter directed, of the cattle, goods, and chattels of the

Power of mitigation to not less than one half of the penalty.

[redacted]

appeal to the justices of the peace at the next general quarter sessions for the county, riding, or division, or to the justice clerk, or other officer of the court of justiciary of the shire, stewartry, city, liberty, or place in *Scotland*; which courts respectively are hereby empowered to examine witnesses upon oath, and finally to hear and determine the same; and in case the judgment of such commissioners, or justice or justices, shall be affirmed, it shall be lawful for the said court of quarter sessions, or court of justiciary, to award the person or persons to pay costs occasioned by such information, conviction, and appeal, as to themselves shall seem meet. (*a*)

52 G.3. c.93. Appeal.

XIV.—If any person or persons shall be summoned as a witness or witnesses to give evidence before such commissioners or justice receiving such information, or before the courts of quarter sessions or justiciary, upon appeal touching any of the matters contained in such information, either on the part of the prosecution or the person or persons accused, and shall neglect or refuse to appear at the time and place to be for that purpose appointed, without a reasonable excuse for his, her, or their neglect or refusal, to be allowed by the commissioners, or justice or justices, or court before whom the prosecution shall be depending, then and in every such case every such person shall forfeit for every such offence the sum of ten pounds, to be recovered, levied, and paid in such manner, and by such means, as other penalties mentioned in this schedule may be recovered, levied, and paid.

Witnesses neglecting to appear to give evidence.

XV. — The commissioners or justice before whom any offender shall be convicted shall cause the said conviction to be made out in the manner and form following, or in any other form of words to the like effect (*mutatis mutandis*); that is to say,

BE it remembered, that on the ——— *day of* ——— *in the year of our Lord* ——— *at* ——— *in the* ——— *of* ——— A. B. *of* ——— *was duly convicted by me* [or, *us*] *of* [here state the offence] *and adjudged to pay the sum of* ———*for his said offence.*

Form of conviction.

(*a*) *The King* v. *The Justices of Salop*, *T.* 59. *G.*3. 2 *B.* & *A.* 694. *Comyn* had obtained a R. N. for a mandamus to the sessions to enter continuances, and hear the appeal of *John Rogers*, against the conviction of a magistrate, under 52 *G.*3. *c.*93. *sched.* (L), *Rule* 12. The defendant was convicted in the penalty of 20*l.* for using greyhounds, for the purpose of killing a hare, not having taken out a certificate. Immediately upon his conviction, he entered into the recognisance required by the act, to prosecute his appeal against it. At the next sessions, he accordingly entered his appeal, and it was respited by the court. At the following sessions he again appeared for the purpose of trying the appeal, but it being objected that there had not been eight days' notice given to the convicting magistrate, as was required by the rule of the sessions, the magistrates dismissed the appeal, and confirmed the conviction. On moving for the R. N., the case of *Rex* v. *Justices of Leeds* (4 *T.R.* 583.), was relied on, and it was contended, that the entering into the recognisance before the magistrate dispensed with the necessity of giving the usual notice to him of trying the appeal. After argument, *Abbott* C. J. said, — It was, perhaps, sufficient for the party to entitle himself to enter his appeal at the *January* sessions, that he had given the security required by the act, although no notice of appeal had been given by him; but when once he had entered his appeal, he was bound to conform to the practice of the sessions. It was, therefore, necessary for him to have given the usual notice of trying his respited appeal at the *Easter* sessions, and not having done so, the magistrates were authorised to dismiss the appeal altogether. — R. D. with costs.

Where a statute gives a party aggrieved a right of appeal, on giving security to a specified amount, he may enter and respite his appeal at the next sessions, after having given such security, without notice to the other side, but after the appeal has been respited, if he does not give the usual notice of trying it, the sessions will be authorised to dismiss it altogether.

52 G.3. c.93.

Given under the hands and seals [or, *hand and seal*] *of* ——— *being commissioners acting in the execution of the acts relating to assessed taxes for the district of* ——— [or, ——— *being a justice of the peace for* ———, *and a commissioner acting in the execution of the acts relating to assessed taxes for the district of* ———].

Conviction to be entered.

And every such conviction shall be entered and registered upon the books of assessment of the commissioners of the district where the offence was committed; and after such entry and registry shall be transmitted to the court of appeal, as herein directed, to be filed there of record; and the said conviction or entry of the same in the said books of assessment, or any examined copy thereof, shall be received in evidence before the respective commissioners for executing this act, in all matters relating to the duties contained in this schedule; and no conviction of such commissioners or justice shall be removeable by any process whatever into any other court of law or equity, or be subject to revision in any manner, other than as aforesaid.

XVI. — All penalties and shares of penalties imposed by and recovered or paid under the authority of the rules contained in this schedule, shall be added to the first or supplementary assessment of the parish or place where the offence shall be committed (as the case shall require), and shall be paid to the collector or collectors of the duties contained in this schedule, for such parish or place, to be by him or them accounted for in the same manner, and paid to the receiver-general at the same times as the duties contained in this act are to be accounted for and paid, and shall and may be distributed, apportioned, and applied in such manner as other penalties may by the said acts relating to the said duties be distributed, apportioned, and applied.

Exemptions from the Duties in Schedule (L).

Any of the royal family

own lordship or manor as aforesaid, to kill hare, pheasant, partridge, or any other game whatsoever; but if the said gamekeeper shall, under colour or pretence of the said power and authority to kill or take the same for the use of such lord or lady, and (*a*) afterwards sell or dispose thereof to any person or persons whatsoever, without the consent or knowledge of the lord or lady of such manor or manors that hath given such power or authority, in manner as aforesaid; and shall be thereof convicted, upon the complaint of such lord or lady of any manor, and upon the oath of one or more credible witnesses, before any one or more of her majesty's justices of the peace as aforesaid, upon such conviction such gamekeeper shall be committed to the house of correction for the space of three months, and there to be kept to hard labour. *5 Ann. c. 14.*

But by stat. 9 *Ann. c.* 25. § 1. No lord of a manor shall make or appoint above one person to be a gamekeeper within any one manor, with power *to kill* the game thereof. And the name of such person shall be entered with the clerk of the peace where the manor lies; the entry to be made and viewed without fee; and a certificate thereof shall be granted by the clerk of the peace, on payment of one shilling. *9 Ann. c. 25. One gamekeeper in one manor; and to be entered with the clerk of the peace.*

And if any other gamekeeper, whose name shall not be so entered, *who shall not be otherwise qualified* by the laws of this kingdom to kill game, shall kill, sell, or expose to sale any hare, pheasant, partridge, moor, heath-game, or grouse, he shall on conviction before one justice, on oath of one witness, forfeit for every offence 5*l.* half to the informer and half to the poor; to be levied by distress and sale; for want of distress, to be sent to the house of correction for three months, for the first offence, and for every other offence four months. Prosecution to be within three months after the offence committed. (See stat. *5 Ann. c.* 14. § 2. *ante*, p. 567.)

Who shall not be otherwise qualified.] From these words it seemeth clear that a gamekeeper who is qualified in his own right to kill game need not be entered with the clerk of the peace.

But by stat. *25 G.* 3. *c.* 50. § 2. Every deputation of a gamekeeper shall be registered with the clerk of the peace of the county or place where the manor shall lie, and such gamekeeper shall take out a certificate thereof annually, the duties upon which are specified in stat. *52 G.* 3. *c.* 93. Sch. (L), *ante*, p. 576. *25 G.3. c.50. To take out a certificate on stamp.*

§ 9. "If any gamekeeper, to whom such deputation shall be granted, shall, for twenty days next after the granting thereof, neglect or refuse to register the same, and take out a certificate thereon, as aforesaid, he shall forfeit 20*l.*"

§ 14. "And in case of a new deputation of a gamekeeper, the same shall be registered with the clerk of the peace, and a certificate thereon obtained as aforesaid: whereupon the former certificate shall be void, and the person acting under the same, after notice to him given of such new certificate, shall be liable to the penalties prescribed by this act, in the same manner as if no certificate had been granted to him."

§ 17. "No certificate obtained under any such deputation shall authorise any such gamekeeper to take or destroy game out of the *Not to extend beyond the manor.*

(*a*) The word *and* seems redundant here.—K.

25 G.3. c.50.

precincts or limits of the manor for which such deputation was given."

And the lord and his gamekeeper have no right to sport over the freehold of others within his manor.

And in a recent case of *Pickering* v. *Noyes*, 4 *Barn. & Cres. Rep.* 648. the court of K. B., in giving judgment, remarked, that a very mistaken notion has long prevailed, that the lord of a manor had a right to sport not only over his own lands, but also over the lands of others within his manor. And in that case it was conceded on behalf of the defendant, who was a gamekeeper, that he could not claim a right to sport over the freehold lands of the plaintiff, merely because they were situate within the ambit of the manor, in respect of which he was appointed gamekeeper.

22 & 23 C.2. c.25. Gamekeeper's power to search.

By stat. 22 & 23 *C.* 2. *c.*25. § 2. The gamekeeper (so authorised) may search for dogs and engines, and seize the same for the use of the lord, or destroy them.

But it hath been adjudged that an authority from the lord of the manor is not sufficient of itself for this purpose, but that he ought to have a warrant from a justice of the peace. At least it may be safe to have such warrant, especially if any houses are to be entered and and searched. *Carpenter* v. *Adams*, *Comb.* 183.

For it would give too great a power to the gamekeepers to leave it in their discretion to search what places they should think proper, as also to constitute them the judges whether such or such a person were or were not qualified to kill game. Therefore it is best to have a warrant from a justice of the peace, after information and oath of the offence first made.

Not empowered to take game from unqualified persons.

A gamekeeper, by his deputation, has no authority to seize game, or take it from an unqualified person. *Bird* v. *Dale*, 1 *Moore's C. P.* 290. But in the case of persons entering parks or enclosed lands where deer are usually kept, with intent unlawfully to kill or take the deer, the deer-keepers or their assistants are empowered to demand and seize the guns, engines, &c. of the offenders, for the use of the owner of the deer. See 7 & 8 *G.* 4. *c.* 29. § 29., and see the stats. respecting *Deer*, *post*, § VII. of this title.

Deer-keepers may take guns, &c.

it was within the knowledge of the plaintiff that manorial rights had been openly exercised by others, and that he had no ground of claim whatever. *Hunt* v. *Andrews*, *H.* 60 *G.* 3. & 1 *G.* 4. 3 *B.* & *A.* 341.

Books preserved in the office of the clerk of the peace, containing enrolments of ancient deputations of gamekeepers for a certain manor, are admissible in evidence to show that those persons, who caused the enrolments to be made, had exercised rights as lords of the manor; and they are admissible, without proof that the original deputations have been lost, or that the gamekeepers named in them, have acted under their authority. S. C. & 1 *Phill. Ev.* 415.

Enrolments of deputations evidence.

By stat. 48 *G.* 3. *c.* 93. After repealing stat. 1 *J.* 1. *c.* 27. § 2. and stat. 3 *G.* 1. *c.* 11., by which no lord of a manor could appoint any person to be a gamekeeper, with power to kill game, unless he was qualified, or a domestic servant, or immediately employed to kill game only for the use of his lord or lady, it is enacted, § 2., that it shall be lawful for any lord or lady of any manor to appoint and depute any person whatever, whether acting as a gamekeeper to any other person or not, or whether retained and paid for as the male servant of any other person or not, or whether a qualified person or not, to be a gamekeeper to any such manor, with authority to such person as gamekeeper to kill game within the same for his own use, or for the use of any other person or persons whatever to be specified in such appointment or deputation, whether qualified or not; and no person so appointed gamekeeper as aforesaid, and empowered to kill game for his own use, or for the use of any other person so specified as aforesaid, and not killing any game for the use of the lord or lady of the manor for which such deputation shall be given, shall be deemed or taken to be, or entered or paid for as the gamekeeper or male servant of the lord or lady making such appointment or giving such deputation as aforesaid; any thing in any act or acts of parliament to the contrary notwithstanding.

48 G.3. c.93. Lords of manors may appoint gamekeepers, whether qualified or not, &c.

And by § 3. Any person appointed gamekeeper under the authority of this act to kill game for his own use or the use of any other person, shall have the same rights, privileges, power, and authority as if he had been legally qualified and appointed to act as gamekeeper, to kill game for the use of the lord or lady of the manor appointing such gamekeeper, under any laws in force immediately before the passing of this act.

Gamekeepers so appointed to have the same rights as if qualified.

A college or a corporation may appoint a gamekeeper; and it is not necessary that it should appear in the deputation that he was to kill game for the sole use and benefit of the lord of a manor. Although unqualified he is protected, unless it be proved that he killed game otherwise than for the use of the lord. *Spurrier* v. *Vale*, 1 *Campb.* 457. 10 *East*, 413.

And by stat. 59 *G.* 3. *c.* 102. *for further regulating the appointment of gamekeepers in* Wales. After reciting that "whereas there are now several districts and lands, within the principality of *Wales*, which are not known to be comprehended within the boundaries of any manors, lordships, or royalties; and there are also several other districts and lands within the principality, which formerly belonged to or formed part or parts of such manors, lordships, or royalties, but which have been alienated therefrom or enfran-

59 G.3. c.102. Appointment of gamekeepers in Wales.

59 G. 3. c. 102.

chised by the lord or lords for the time being of such manors, lordships, or royalties, and many of such districts and lands are very extensive: And whereas the owner or owners of such districts and lands cannot, nor can any other person or persons appoint any gamekeeper or other servant to kill game on such lands for the use of the owner or owners thereof, without subjecting such gamekeeper or other servant to the penalties imposed by divers acts of parliament made for the preservation of the game; which regulations and enactments have tended greatly to the encouragement of poachers and other idle and disorderly persons, to destroy the game within such districts of the said principality;" for remedy whereof it is enacted, "that after the 1st of *August* 1819, it shall be lawful to and for all and every persons and person, being seised in fee or as of freehold, or otherwise beneficially entitled in his, her, or their own right, of and in any lands situate and being within the said principality, of the full and clear annual rent of 500*l.*, and not being within the bounds of any manor, lordship, or royalty, or being within the precinct or bounds of any manor, lordship, or royalty, shall have been or shall be enfranchised or alienated therefrom; or † to appoint by any writing or writings under his, her, or their hand or hands, a gamekeeper to preserve, or to course, hunt, shoot at, or kill game, for the use of the person or persons who shall make such appointment, in, over, and upon such his, her, or their lands, and in, over, and upon the lands of every other person or persons who shall, by licence in writing under his, her, or their hand or hands, authorise him, her, or them to appoint a gamekeeper or gamekeepers, or other servant or servants, to preserve, course, hunt, shoot at, or kill game in, over, and upon the lands of the person or persons not being within the bounds of any manor, lordship, or royalty, so granting such licence."

Persons possessing certain property may appoint gamekeepers.

† *Sic.*

§ 2. And "every such gamekeeper having such appointment as aforesaid, during the continuance of such appointment, shall not be made subject or liable to any penalties imposed by any former

Gamekeepers not subject to penalties under

authorise any such gamekeeper or gamekeepers, servant or servants, to enter upon any such lands, to preserve, course, hunt, shoot at, or kill game thereon, without the consent in writing of the person or persons in the actual possession of such lands first had and obtained." 59 G.3. c.102.

§ 3. "And whereas the manors, lordships, and royalties, within the said principality, are in many instances extremely extensive, and comprehend very large tracts of country: And whereas by an act passed in the ninth year of the reign of queen *Anne*, intituled *An act for making the act of the 5th year of her majesty's reign, for the better preservation of the game, perpetual, and for making the same more effectual*, it is among other things enacted, that only one gamekeeper shall be appointed to kill game within any one manor: And whereas such restriction hath, on account of the extent of the said manors, lordships, and royalties been found extremely inconvenient, and tended greatly to the destruction of the game within the said principality;" it is enacted, "that the lords and ladies of such manors, lordships, and royalties, and the stewards of the crown for such manors, lordships, and royalties as appertain to his majesty within the said principality, shall be, and they are hereby authorised respectively to nominate and appoint gamekeepers for such districts and divisions of their respective manors, lordships, and royalties, as they shall think fit; and that each and every gamekeeper so appointed, shall have the like powers, privileges and authorities within such district or division as any gamekeeper appointed for the whole of a manor hath or would have by virtue of any act now in force: Provided always, that nothing herein contained shall be construed to authorise the appointment of more than one gamekeeper for the same district or division, and that all appointments under this act shall be registered with the clerk of the peace in like manner, and be subject to all other regulations which are enacted with respect to the appointment of gamekeepers of manors by any act now in force." Lords of extensive manors may appoint gamekeepers for districts.

§ 4. It shall be lawful for all and every persons and person, who shall or may grant or make any appointment or licence, by virtue of this act, to revoke, annul, or render void all and every such consent, appointment, and licence, and to grant or make other consent or consents, appointments or licences in lieu thereof, as often as to him, her, or them, shall seem proper. Persons granting appointments may annul the same, and grant others in lieu thereof.

§ 5. Provided, "that nothing herein contained shall extend or be construed to extend the protection of this act to any person or persons killing game without a certificate taken out or purchased according to the provisions of the act now in force respecting game certificates, or in any manner to affect the rights of H. M., or his successors, or of any other person or persons, in, to, or over any manor, lordship, or royalty, within the said principality." This act not to extend to persons killing game without certificate.

VI. Prevention of Persons going armed by Night for the Destruction of Game.

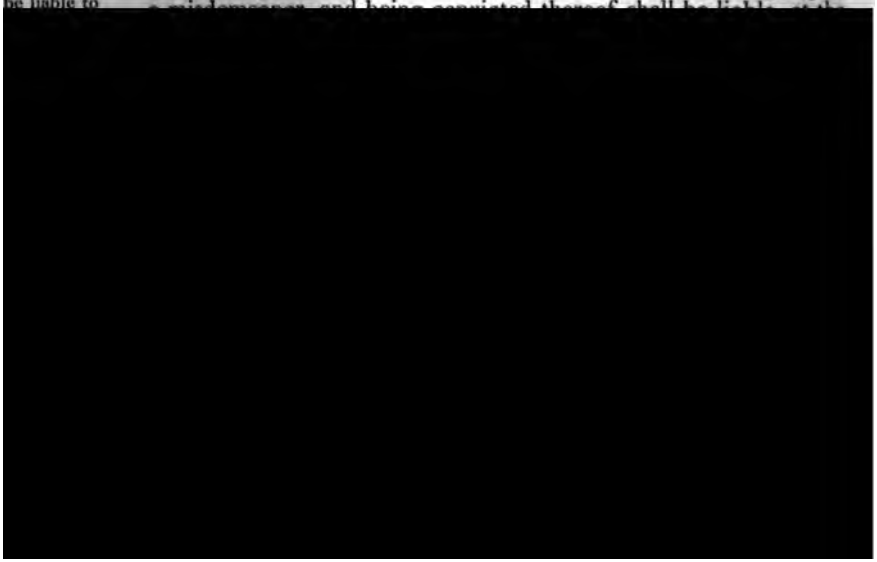
9 G. 4. c. 69. Former act repealed.

Persons taking or destroying game by night to be committed for the first offence for three months, and kept to hard labour, and to find sureties;

2d offence six months, and kept to hard labour, and to find sureties;

3d offence, to be liable to

By stat. 9 *G.* 4. *c.* 69. intituled *An act for the more effectual prevention of persons going armed by night for the destruction of game:* § 1. repeals the former stat. 57 *G.* 3. *c.* 90. and enacts, that, if any person shall, after the passing of this act, by night, unlawfully take or destroy any game or rabbits in any land, whether open or enclosed, or shall by night unlawfully enter or be in any land, whether open or enclosed, with any gun, net, engine, or other instrument, for the purpose of taking or destroying game, such offender shall, upon conviction thereof before two justices of the peace, be committed for the first offence to the common gaol or house of correction for any period not exceeding three calendar months, there to be kept to hard labour, and at the expiration of such period shall find sureties by recognisance, or in *Scotland* by bond of caution, himself in 10*l.* and two sureties in 5*l.* each, or one surety in 10*l.*, for his not so offending again for the space of one year next following; and in case of not finding such sureties, shall be further imprisoned and kept to hard labour for the space of six calendar months, unless such sureties are sooner found; and in case such person shall so offend a second time, and shall be thereof convicted before two justices of the peace, he shall be committed to the common gaol or house of correction for any period not exceeding six calendar months, there to be kept to hard labour, and at the expiration of such period shall find sureties by recognisance, or bond as aforesaid, himself in 20*l.*, and two sureties in 10*l.* each, or one surety in 20*l.*, for his not so offending again for the space of two years next following; and in case of not finding such sureties, shall be further imprisoned and kept to hard labour for the space of one year, unless such sureties are sooner found; and in case such person shall so offend a third time, he shall be guilty of [illegible]



apprehend him, he shall, whether it be his first, second, or any other offence, be guilty of a misdemeanor, and being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond seas for seven years, or to be imprisoned and kept to hard labour in the common gaol or house of correction for any term not exceeding two years; and in *Scotland*, whenever any person shall so offend, he shall be liable to be punished in like manner. 9 G. 4. c. 69. — or, and liable to be transported for seven years, or imprisoned for two years.

§ 3. Where any person shall be charged on the oath of a credible witness, or in *Scotland* on the application of the procurator fiscal of court, before any justice of the peace, with any offence punishable upon summary conviction by virtue of this act, the justice may issue his warrant for apprehending such person, and bringing him before two justices of the peace, to be dealt with according to law. Power to issue a warrant for apprehension of offenders.

§ 4. The prosecution for every offence punishable upon summary conviction by virtue of this act shall be commenced within six calendar months after the commission of the offence; and the prosecution for every offence punishable upon indictment, or otherwise than upon summary conviction, by virtue of this act, shall be commenced within twelve calendar months after the commission of such offence. Limitation of time for proceedings under this act.

§ 5. The justices of the peace before whom any person shall be summarily convicted of any offence against this act, may cause the conviction to be drawn up in the following form of words, or in my other form of words to the same effect, as the case may require; that is to say, Form of conviction.

BE it remembered, that on the ——— day of ———, in the year of our Lord ——— at ——— in the county of ——— [or *riding, division, liberty, city,* &c. as the case may be,] A. O. *is convicted before us* [naming the justices], *two of H. M.'s justices of the peace for the said county,* [or *riding,* &c.] *for that he the said* A. O. *did* [specify the offence, and the time and place when and where the same was committed, as the case may be, and on a second conviction state the first conviction]; *and we the said justices adjudge the said* A. O. *for his said offence to be imprisoned in the ——— and there kept to hard labour for the period of ———, and at the expiration of such period to find sureties, by recognisance, or bond of caution in* Scotland, *himself in the sum of ten pounds, and two sureties in the sum of five pounds each, or one surety in the sum of ten pounds, conditioned that he the said* A. O. *shall not so offend again for the space of one year next following; and we further adjudge the said* A. O., *in case he shall not find such sureties as aforesaid, to be further imprisoned and kept to hard labour for the space of six calendar months, unless such sureties shall be sooner found. Given under our hands, the day and year first above mentioned.*

§ 6. Any person who shall think himself aggrieved by any such summary conviction may appeal to the next court of general or quarter sessions which shall be holden, not less than twelve days after the day of such conviction, for the county, riding, or division wherein the cause of complaint shall have arisen: Provided that such person shall give to the complainant a notice in writing of such appeal, and of the cause and matter thereof, within three days after such conviction, and seven clear days at the least before such Appeal.

9 G.4. c.69.

sessions, and shall also either remain in custody until the sessions, or within such three days enter into a recognisance, or bond of caution in *Scotland*, with a sufficient surety, before a justice of the peace, conditioned personally to appear at the said sessions, and to try such appeal, and to abide the judgment of the court thereupon, and to pay such costs as shall be awarded by the court; and upon such notice being given, and such recognisance or bond being entered into, the justice before whom the same shall be entered into shall liberate such person, if in custody; and the court at such sessions shall hear and determine the matter of the appeal, and shall make such order therein, with or without costs to either party, as to the court shall seem meet; and in case of the dismissal of the appeal, or the affirmance of the conviction, shall order and adjudge the offender to be dealt with and punished according to the conviction, and to pay such costs as shall be awarded; and shall, if necessary, issue process for enforcing such judgment.

No certiorari, &c.

§ 7. That no such conviction, or adjudication made on appeal therefrom, shall be quashed for want of form, or be removed by *certiorari*; and no warrant of commitment shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted, and there be a good and valid conviction to sustain the same.

Convictions to be returned to the quarter sessions and registered, and may be given in evidence.

§ 8. On every conviction under this act for a first or second offence, the convicting justices shall return the same to the next quarter sessions for the county, riding, division, city, or place wherein such offence shall have been committed; and the record of such conviction, or any copy thereof, shall be evidence in any prosecution to be instituted against the party thereby convicted for a second or third offence; and the clerk of the peace shall immediately on such return make or cause to be made a memorandum of such conviction in a register to be kept by him of the names and places of abode of the persons so convicted, and shall state whether such conviction be the first or second conviction of

William Nash and *James Weller* were convicted at *Maidstone Spring Assizes*, 1819, *MS. C. C. R.* before *Bayley* J. under the former stat. 57 *G.* 3. *c.* 90., upon a charge of being found armed in the night, in a wood which they had entered with intent to kill the game. The prisoners were shooting in the wood in the night, and the flash of one of their guns was seen by a keeper who was upon the watch for them, but before they were seen they had abandoned their guns in the wood, and were creeping away upon their knees. A doubt arising whether the statute applied where the prisoners had not their arms in their possession, or within their reach at the time they were discovered, judgment was respited, and the point referred to the judges, who held the conviction right.

R. v. Nash and Weller. It is not necessary that the prisoners should have their arms in actual possession at the time they are discovered.

But where several were out together, and one had arms *without the knowledge of the others*, the others were held not to be liable to be convicted under the former act, and therefore it seems would not be liable under the present act.

Johnson and *Southern* went into a close in the night to kill game; *Johnson* had a loaded pistol, but *Southern* did not know it. On case, the judges thought *Southern* not liable to be convicted under this act. *R.* v. *Johnson and Southern.* Decided in *E. T.* 1821. *R. & R. C. C. R.* 444.

VII. Laws for preserving the four-footed Game in particular.

Which said laws seem to concern all persons whomsoever, whether qualified or not.

Now the four-footed game, or the game of beasts, are of three kinds, *viz.*

(1.) *Deer.*
[3 Ed. 1. c. 20. — 7 & 8 G. 4. c. 27. — c. 29.]

(2.) *Hares.*
[14 & 15 H. 8. c. 10. — 9 Ann. c. 25. — 13 G. 3. c. 80. — 7 & 8 G. 4. c. 27. — c. 29.]

(3.) *Conies.*
[52 G. 3. c. 93. — 7 & 8 G. 4. c. 27. — 7 & 8 G. 4. c. 29.]

(1.) Deer-stealing.

By stat. 3 *Ed.* 1. *c.* 20. (*a*) If *trespassers in parks* be thereof attainted at the suit of the party, great and large amends shall be awarded according to the trespass, and they shall have three years' imprisonment, and after shall make fine at the king's pleasure (if they have whereof), and then shall find good surety that after they shall not commit the like trespass; and if they have not whereof to make fine, after three years' imprisonment, they shall find like surety; and if they cannot find like surety, they shall abjure the realm. And if none sue within the year and a day, the king shall have the suit. 3 Ed. 1. c. 20.

(*a*) But note, that so much of this statute as relates to the punishment for taking the king's venison, is repealed by 7 & 8 *G.* 4. *c.* 27.

Trespasses.] This is, when a man either chaseth in a park, or endeavours to kill some of the game thereof. 2 *Inst.* 199.

In parks.] This act, because it is very penal, is to be understood, not of a nominal park erected without warrant, but of a lawful park only, whereupon three things are required; 1. A liberty, either by grant or prescription; 2. Enclosure, by pale, wall, or hedge; and, 3. Beasts, savages of the park. 2 *Inst.* 199.

7 & 8 G. 4. c. 27. Former acts repealed.

By stat. 7 & 8 *G.* 4. *c.* 27. The former statute and parts of statutes relative to this subject are repealed.

7 & 8 G. 4. c. 29. Stealing, &c. deer in any enclosed ground, felony.

The like in certain unenclosed ground punishable summarily.

By stat. 7 & 8 *G.* 4. *c.* 29. § 26. If any person shall unlawfully and wilfully course, hunt, snare, or carry away, or kill or wound, or attempt to kill or wound, any deer kept or being in the enclosed part of any forest, chase, or purlieu, or in any enclosed land wherein deer shall be usually kept, every such offender shall be guilty of felony, and, being convicted thereof, shall be liable to be punished in the same manner as in the case of simple larceny; and if any person shall unlawfully and wilfully course, hunt, snare, or carry away, or kill or wound, or attempt to kill or wound, any deer kept or being in the unenclosed part of any forest, chase, or purlieu, he shall for every such offence, on conviction thereof before a justice of the peace, forfeit and pay such sum, not exceeding 50*l.* as to the justice shall seem meet; and if any person who shall have been previously convicted of any offence relating to deer for which a pecuniary penalty is by this act imposed, shall offend a second time, by committing any of the offences hereinbefore last enumerated, such second offence, whether it be of the same description as the first offence or not, shall be deemed felony, and such offender, being convicted thereof, shall be liable to be punished in the same manner as in the case of simple larceny.

Deer-stealing in unenclosed ground after any other offence as to deer, felony.

Suspected persons, found in possession of venison, &c. and not satis-

§ 27. If any deer, or the head, skin, or other part thereof, or any snare or engine for the taking of deer, shall by virtue of a search-warrant, to be granted as hereinafter mentioned, be found in the possession of any person, or on the premises of



or shall unlawfully and wilfully destroy any part of the fence of any land where any deer shall be then kept, every such offender, being convicted thereof before a justice of the peace, shall forfeit and pay such sum of money, not exceeding 20*l.*, as to the justice shall seem meet. 7 & 8 G. 4. c. 29.

§ 29. If any person shall enter into any forest, chase, or purlieu, whether enclosed or not, or into any enclosed land where deer shall be usually kept, with intent unlawfully to hunt, course, wound, kill, snare, or carry away any deer, it shall be lawful for every person entrusted with the care of such deer, and for any of his assistants, whether in his presence or not, to demand from every such offender any gun, fire-arms, snare, or engine in his possession, and any dog there brought for hunting, coursing, or killing deer, and in case such offender shall not immediately deliver up the same, to seize and take the same from him in any of those respective places, or, upon pursuit made, in any other place to which he may have escaped therefrom, for the use of the owner of the deer; and if any such offender shall unlawfully beat or wound any person entrusted with the care of the deer, or any of his assistants, in the execution of any of the powers given by this act, every such offender shall be guilty of felony, and, being convicted thereof, shall be liable to be punished in the same manner as in the case of simple larceny. Deer-keepers, &c. may seize the guns, &c. of offenders, who, on demand, do not deliver up the same. Resistance to keepers, &c. in the execution of their duty.

Note.— And note the several other provisions of this statute respecting the apprehension and punishment of offenders, and proceedings before justices, &c. inserted at length, *ante*, tit. **Fish and Fisheries**, p. 439. *et seq.*

(2.) Of Hares.

It is to be remembered that I have already, under the third part of this title, treated of those particulars which are common to this with other species of the game, as to destroying the same by unqualified persons; I here take notice of such things as belong to *hares* only, and which for the most part seem generally to concern all persons, whether qualified or not. (B.)

By stat. 14 & 15 *H.* 8. *c.* 10. No person, of what estate, degree, or condition he be, shall trace, destroy, or kill any hare in the snow with any dog, bitch, bow, or otherwise. And the sessions or leet may enquire thereof; and after inquisition found, they shall, for every hare so killed, cess upon every offender 6*s.* 8*d.* to be forfeited to the king, if in the sessions, and to the lord of the leet, if in the leet. 14 & 15 H. 8. c. 10. Tracing in the snow.

By stat. 9 *Ann. c.* 25. § 3. If any person whatsoever shall take, kill, or destroy any hare in the night-time, he shall, on conviction before one justice, on view, or on oath of one witness, forfeit 5*l.*, half to the informer, and half to the poor, by distress and sale; for want of distress, to be sent to the house of correction for three months for the first offence, and for every other offence, four months. 9 Ann. c. 25. Killing hares in the night, or on Sunday, or Christmas-day.

And by stat. 13 *G.* 3. *c.* 80. § 1. If any person shall knowingly and wilfully kill, take, or destroy any hare, or use any gun, dog, snare, net, or other engine, with intent to kill, take, or destroy any hare in the night, that is to say, between the hours of seven at night and six in the morning from the 12th day of *October* to the 12th day of *February*, and between nine at night and four in the morning from the 12th day of *February* to the 12th day of Oc- 13 G. 3. c. 80.

13 Geo. 3. c. 80. *tober*, every such person shall, on conviction on oath of one witness before one justice, forfeit for the first offence not exceeding 20*l.* nor less than 10*l.*, and for the second offence not exceeding 30*l.* nor less than 20*l.*

Conviction. § 2. And the justice before whom any offender shall be convicted as aforesaid shall cause the conviction to be made out in the manner and form following:—*Be it remembered, that on the ——— day of ———, in the year of our Lord ———*, A. B. *is convicted before me ——— one of his majesty's justices of the peace for the county of ———*, [specifying the offence, with the time and place where the same was committed, and also specifying that it was the first or second offence against this act, as the case shall be]. *Given under my hand and seal the day and year aforesaid.* Which conviction the said justice shall cause to be fairly wrote over on parchment, and returned to the next sessions, to be filed by the clerk of the peace; who by § 3. shall, upon application to him made, deliver copies thereof on payment of 1*s.* for each copy.

If a second offence. § 1. But in case any information shall be made upon oath as aforesaid before a justice against an offender, and it shall appear that such offender hath already been convicted of a first and second offence against this act, in such case the justice shall commit him to the common gaol or house of correction till the next general quarter sessions, unless he shall have entered into recognisance with two sufficient sureties to appear at such sessions, then and there to be tried by indictment for the said offence; and such justice shall also bind over the informer to prosecute the said offender by indictment as aforesaid; and the justices at sessions shall direct the said indictment to be tried accordingly; and if upon such indictment the offender shall be convicted, he shall forfeit and pay in court the sum of 50*l.*; and if he shall neglect or refuse to pay the same, he shall be committed to the common gaol or house of correction for not less than six nor more than twelve calendar months, unless such penalty shall be sooner paid; and



warrant, not exceeding seven days from the taking such security: but if upon such return no sufficient distress can be had, the said justice shall commit the offender to the common gaol or house of correction for three calendar months, unless the forfeiture shall be sooner paid, or until such offender, thinking himself aggrieved by such conviction, shall give notice to the informer that he intends to appeal to the next sessions, and shall enter into a recognisance before a justice with two sufficient sureties conditioned to try such appeal, and to abide the order of and pay such costs as shall be awarded by the justices at such sessions; which notice shall not be less than 14 days before the trial of the appeal. And the justices at such sessions, on proof of such notice and recognisance, shall hear and finally determine the appeal in a summary way, and award costs to either party as they shall judge proper; and their determination shall be final. 13 G. 3. c. 80. Appeal.

§ 6. "If any person or persons shall, upon a *Sunday*, or on *Christmas-day*, in the day-time, knowingly and wilfully take, kill, or destroy any hare, pheasant, partridge, heath-game, or moor-game, or shall, upon a *Sunday*, or on a *Christmas-day*, use any gun, dog, net, or engine for taking, killing, or destroying any hare, pheasant, partridge, moor-game, or heath-game, every such person being convicted thereof, in the manner and form prescribed by this act, shall be subject to the like forfeitures and penalties as are hereinbefore enacted to be inflicted for other offences against this act." Wilfully killing game, &c. on Sunday. Penalty.

§ 7. And if the offender dwell in another county than that in which the offence was committed, the justice before whom the information or indictment was made may direct his warrant of apprehension and distress and sale to any constable where the offence was committed, to be by him carried to a justice residing near where the offender dwells, to be signed by him on the back of the said warrant, on proof on oath of the hand-writing of the justice who first granted the warrant; which endorsement shall be sufficient authority for the constable of the place where he dwells, or where his goods and chattels or distress are, or for the constable who brings the warrant to be endorsed, to apprehend and convey the offender before the justice who first granted the warrant, or any other justice of that county where the offence was committed, or for such constable to levy the penalty by distress and sale; and also, in case where no sufficient distress can be had, to convey the offender before the justice who first granted the warrant of distress, or any other justice of that county where the offence was committed, to be dealt with according to law. And the justice who endorsed the warrant shall direct the constable or other person making the distress and sale to deliver over the money levied to the justice who first granted the warrant; and if such constable or other person shall neglect or refuse to pay such sum, or deliver over all proceedings upon such distress and sale or warrant of apprehension, the justice who first granted the warrant, or the justice who indorsed it, may commit him to the common gaol or house of correction for six months, or till the money shall be paid, and the proceedings delivered over to the justice who first granted the warrant. How penalties recovered, &c. Constable refusing to pay money. Punishment.

§ 8. And no order made, or any other proceedings upon this act, shall be quashed for want of form, or removed by *certiorari* or other writ into any of the courts of record at *Westminster*.

13 G.3. c.80.

Prosecutions to be within one month.

§ 9. Provided that no proceeding shall be upon this act, unless information on oath be made before a justice within one calendar month after the offence committed.

Note. — In respect to the third offence, here seems to be an inconsistency. The former part of the act says, if the offender shall not, upon conviction by indictment at the sessions, pay in the court the penalty of 50*l.*, he shall be committed to the gaol or house of correction for not less than six months, nor more than twelve. — The latter part of the act says, the said penalty shall be levied by distress; and if no distress can be had, the offender shall be committed to the gaol or house of correction for *three* months; with power of appealing to the sessions then next following.

An indictment will not lie for conspiring to commit a civil trespass.

An indictment will not lie for conspiring to commit a civil trespass upon property, by agreeing to go, and by going into a preserve for hares, the property of another, for the purpose of snaring them; though it be alleged to be done in the night-time, and that the defendants were armed with offensive weapons for the purpose of opposing resistance to any endeavours to apprehend or obstruct them. *R.* v. *Turner and others*, 13 *East*, 228.

7 & 8 G.4. c.27. Former acts repealed.

By stat. 7 & 8 *G.* 4. *c.* 27. Several former statutes relative to this subject were repealed.

7 & 8 G.4. c.29. Killing, &c. hares or conies in a warren in the night-time.

The like in the day-time.

By stat. 7 & 8 *G.* 4. *c.* 29. § 30. If any person shall unlawfully and wilfully in the night-time take or kill any hare or coney in any warren or ground lawfully used for the breeding or keeping of hares or conies, whether the same be enclosed or not, every such offender shall be guilty of a misdemeanor, and, being convicted thereof, shall be punished accordingly; and if any person shall unlawfully and wilfully in the day-time take or kill any hare or coney in any such warren or ground, or shall at any time set or use therein any snare or engine for the taking of hares or conies, every such offender, being convicted thereof before a justice of the peace, shall forfeit and pay such sum of money, not

For a man cannot have an action for another man's conies breaking into his ground, because they are no longer the other's than while they are in the warren or place where he hath a right to keep them; so that no violation hereby arises to the property of one man by the beasts of another; but the conies being in their natural liberty, may be lawfully killed by the owner of the soil. 3 *Bac. Abr.* 326.

But if the lord hath a right to put conies upon the common, and by an excess in the number surcharges the common, and by the number of burrows made by the conies prevents the commoners' cattle from depasturing the common; an action in such case is the proper remedy, and the tenant may not of his own accord fill up the burrows and remove the nuisance. As in the case of *Cooper* v. *Marshall*, 1 *Burr.* 259. — By Ld. *Mansfield* C. J. The question in this case is not, whether the act of the lord be or be not hurtful, or how far it may be so: but the question turns upon the remedy, whether it is abateable, whether the commoner can do himself justice? It may be prejudicial to the commoner, yet not injurious; it may be both prejudicial and injurious, yet not abateable. The lord by his grant of common gives every thing incident to the enjoyment of it, as ingress, egress, and the like; and thereby authorises the commoner to remove every obstruction to his cattle's grazing the grass which grows upon such a spot of ground; because every such obstruction is directly contrary to the terms of the grant. A hedge, a gate, or a wall, to keep the commoners' cattle out, is inconsistent with a grant which gives them a right to come in. But the lord still remains owner of the soil; and is not debarred from exercising any act of ownership. The commoner has no right to meddle with the soil. In the present case, the lord has done nothing contrary to the grant. He hath not obstructed the commoner from entering and putting in his cattle. The lord has a right to put conies upon the common. The conies themselves naturally make the burrows. So that they are incident to the right of putting on the conies. If the lord surcharges, the commoner is injured in his right of common, it is true. But what is the commoner's remedy? Not to abate; not to be his own judge, in a complicated question, which may admit of nicety to determine. There is a certain line to be drawn. The lord has a right so far, but no farther. Yet the commoner cannot destroy or drive off the conies; nor, consequently, can he destroy the burrows, which is in effect destroying the conies.

By stat. 52 *G.* 3. *c.* 93. The necessity for taking out a certificate to kill game, is extended to killing conies, with certain exceptions. *Vide ante*, p. 577. 52 G. 3. c. 93.

VIII. Laws concerning the winged Game in particular.

And herein that which is, strictly speaking, Game, is not the sole subject of consideration.

(1.) *Of hawks and hawking.*
[11 H. 7. c. 17. — 23 El. c. 10.]

(2.) *Of swans.*
[22 Ed. 4. c. 6. — 11 H. 7. c. 17. — 1 J. 1. c. 27.]

(3.) *Of partridges and pheasants.*
[11 H. 7. c. 17. — 23 El. c. 10. — 1 J. 1. c. 27. — 7 J. 1. c. 11. — 9 Ann. c. 25. — 13 G. 3. c. 80. — 39 G. 3. c. 34.]

(4.) *Of pigeons.*
[1 J. 1. c. 27.]

(5.) *Of wild ducks, wild geese, and other water fowl.*
[25 H. 8. c. 11. — 1 J. 1. c. 27. — 9 Ann. c. 25. — 10 G. 2. c. 32.]

(6.) *Of heath fowl, grouse, and bustards.*
[1 J. 1. c. 27. — 4 & 5 W. 3. c. 23. — 5 Ann. c. 14. — 9 Ann. c. 25. — 13 G. 1. c. 80. — 13 G. 3. c. 55. — 43 G. 3. c. 112. — 50 G. 3. c. 67.]

(7.) *Of herons.*
[19 H. 7. c. 11. — 25 H. 8. c. 11. — 1 J. 1. c. 27.]

(8.) *Of other wild fowl.*
[25 H. 8. c. 11.]

(1.) Of Hawks and hawking.

11 H. 7. c. 17. What hawks a man shall bear.

By stat. 11 *H.* 7. *c.* 17. No man shall bear any hawk of the breed of *England*, called a nyesse, goshawk, tassel, laner, laneret, or faulcon, on pain of forfeiting his hawk to the king. And if he bring any of them over sea, he shall bring a certificate thereof from the officer of the port; on the like pain of forfeiting the same to the king. And the person that bringeth any such hawk to the king shall have a reasonable reward of the king, or else the hawk for his labour.

34 Ed. 3. c. 22. Person finding a hawk.

By stat. 34 *Ed.* 3. *c.* 22. Every person who findeth a faulcon, tercelet, laner, or laneret, or other hawk that is lost, shall presently bring the same to the sheriff; and the sheriff shall make

[redacted]

But by stat. 11 *H.* 7. *c.* 17. No man shall take any ayre, faulcon, goshawk, tassel, laner, or laneret, in their warren, wood, or other place; nor purposely drive them out of their coverts accustomed to breed in, to cause them to go to other coverts to breed; nor slay them for any hurt done by them; on pain of 10*l.*, half to him that will sue before the justices of the peace, and half to the king. 11 H. 7. c. 17.

And no manner of person, of what condition or degree he be, shall take or cause to be taken on his own ground, or any other man's, the eggs of any faulcon, goshawk, or laner, out of the nest; on pain (being convicted thereof before the justices of the peace) of imprisonment for a year and a day, and fine at the king's will; half to the king, and half to the owner of the ground where the eggs were taken.

By stat. 23 *Eliz. c.* 10. § 4. If any manner of person shall hawk in another man's corn, after it is eared, and whilst growing, and before it is shocked, and be convicted at the assizes, sessions, or leet, he shall forfeit 40*s.* to the owner; and if not paid in ten days, he shall be imprisoned for a month. 23 El. c. 10. Hawking in corn.

(2.) Of Swans.

A swan is a royal fowl; and all those the property whereof is not known, do belong to the king by his prerogative. *Case of Swans*, 7 *Rep.* 16.

By stat. 22 *Ed.* 4. *c.* 6. No person (other than the king's son) unless he have lands of freehold to the value of five marks a year shall have any mark or game of swans; on pain of forfeiting the swans, half to the king, and half to any person (so qualified) who shall seize the same. 22 Ed. 4. c. 6. Qualification to keep swans.

It is felony to take any swans that be lawfully marked, though they be at large. *Dalt. c.* 156. See Vol. III. tit. Larceny, § 1. Stealing swans marked.

And as to swans unmarked; if they be domestical or tame, that is, kept in a moat, or in a pond near to a dwelling-house, to steal such is also felony. *Id.* Swans unmarked.

So it seemeth of swans unmarked, so long as they keep within a man's manor, or within his private rivers; or if they happen to escape from thence, and be pursued and taken, and brought in again. *Id.*

But if swans that are unmarked shall be abroad, and shall attain to their natural liberty, then the property of them is lost; and so long felony cannot be committed by taking them. *Id.*

And yet such unmarked and wild swans the king's officers may seize (being abroad) for the king's use by his prerogative. Also the king may grant them, and, by consequence, another may prescribe to have them, within a certain precinct or place. *Id.* 7 *Rep.* 18.

By stat. 1 *J.* 1. *c.* 27. § 2. Every person who shall take the eggs of any swans out of the nests, or willingly break or spoil them in the nests, and shall be convicted thereof before two justices by confession, or oath of two witnesses, shall be committed to gaol three months, unless he pay to the churchwardens, for the use of the poor, 20*s.* for every egg; or after one month of his commitment become bound by his recognisance with two sureties in 20*l.* a-piece, before two justices, never to offend again in like manner: which recognisance shall be returned to the next sessions. 1 J. 1. c. 27. Swans' eggs.

11 H.7. c.17. **But by stat.** 11 *H.* 7. *c.* 17. No person shall take or cause to be taken on his own ground, or any other man's, the eggs of any swan, on pain (on conviction before the justices of the peace) of imprisonment for a year and a day, and fine at the king's will, half to the king, and half to the owner of the swan.

(3.) Of Partridges and Pheasants.

Partridges and pheasants are birds of warren, and the law seems peculiarly to protect them; as appears by what follows.

11 H.7. c.17. Taking them in another man's ground. **By stat.** 11 *H.* 7. *c.* 17. It is enacted, that no person, of what condition he be, shall take or cause to be taken any pheasants or partridges, by nets, snares, or other engines, out of his own warren, upon the freehold of any other person, without the special license of the owner or possessioner of the same; on pain of 10*l.*, half to him that shall sue, and half to the owner or possessioner of the ground where they shall be taken.

1 J.1. c.27. Taking them with nets, dogs, or engines; or their eggs. **By stat.** 1 *J.* 1. *c.* 27. § 2. Every person who shall shoot at, kill, or destroy any pheasant or partridge with any gun or bow; or shall take, kill, or destroy them with setting-dogs and nets, or with any manner of nets, snares, engines, or instruments whatsoever; or shall take their eggs out of the nests, or spoil them in the nests, shall on conviction before two justices, by confession or oath of two witnesses, be committed to gaol three months, unless he pay upon conviction to the churchwardens, for the use of the poor, 20*s.* for every pheasant, partridge, or egg; or after one month after his commitment become bound by recognisance with two sureties before two justices in 20*l.* each, not to offend again in like manner. The recognisances to be returned to the next sessions.

7 J. 1. c. 11. **And by stat.** 7 *J.* 1. *c.* 11. Every person who shall take, kill, or destroy any pheasant or partridge, with setting-dogs and nets, or otherwise with any manner of nets, snares, or engines, shall on conviction before two justices, by confession or oath of one witness, be committed to the common gaol where the offence shall



he shall be imprisoned for one month: and moreover, besides such forfeiture or imprisonment, he shall give bond to some justice of the peace, with good sureties, for the space of two years, not to take, kill, or destroy any partridges or pheasants contrary to the true meaning of this act. 23 El. c. 10.

By stat. 9 *Ann. c.* 25. § 3. If any person whatsoever shall take, kill, or destroy any pheasant or partridge in the night-time, he shall, on conviction before one justice, on oath of one witness, forfeit 5*l.*, half to the informer, and half to the poor, by distress; for want of distress to be sent to the house of correction for three months for the first offence, and for every other offence four months. 9 Ann. c. 25.

And by stat. 13 *G.* 3. *c.* 80. § 1. If any person shall knowingly and wilfully kill, take, or destroy, or use any gun, dog, snare, net, or other engine, with intent to kill, take, or destroy any pheasant or partridge in the night, that is, between the hours of *seven* at night and *six* in the morning, from the 12th day of *October* to the 12th day of *February*, and between the hours of *nine* at night and *four* in the morning, from the 12th day of *February* to the 12th day of *October*, or in the day-time, on a *Sunday* or *Christmas-day*, he shall forfeit for the first offence not exceeding 20*l.*, nor less than 10*l.*; for the second offence not exceeding 30*l.*, nor less than 20*l.*; for the third and every other subsequent offence, 50*l.* To be levied and recovered as the like penalties for killing any hare in the night, or on a *Sunday* or *Christmas-day*, as is before set forth. *Vide ante*, § VII. (2.) (*Hares*), p. 595. 13 G.3. c.80. Or on a Sunday or Christmas-day.

By stat. 7 *J.* 1. *c.* 11. § 2. Every person whatsoever, who shall hawk at, destroy, or kill any pheasant or partridge with any kind of hawk, or dog, by colour of hawking, between the first of *July* and the last of *August*, shall, on conviction before two justices, by confession or oath of two witnesses, in six months after the offence, be committed to gaol for one month, unless he pay upon conviction to the churchwardens or overseers, for the use of the poor, 40*s.* for every such hawking at any pheasant or partridge, and 20*s.* for every such pheasant or partridge which he, his hawk, or dog, shall take or kill. 7 J.1. c.11. At what time hawking at them shall be prohibited.

J. Rough being convicted on an indictment for stealing a pheasant, value 40*s.*, of the goods and chattels of *H. S.*, all the judges, on a second conference in *Easter* term 1779, after much debate and difference of opinion, agreed that the conviction was bad; for in cases of larceny of animals *feræ naturæ* the indictment must show that they were either dead, tame, or confined; otherwise they must be presumed to be in their original state; and that it is not sufficient to add, "of the goods and chattels of" such an one. 2 *East's P. C.* 607. Stealing pheasants.

See *Jones's* case, Vol. III. tit. Larceny, § I. p. 238.]

(4.) Of Pigeons.

A lord of a manor may build a dove-cote upon his land, parcel of his manor; but a tenant of the manor cannot do it without license. 3 *Salk.* 248. But any freeholder may build a dove-cote on his own ground. *Cro. Jac.* 382. 490. Who may erect a dove-cote.

And it hath been adjudged that erecting a dove-house is not a common nuisance, nor presentable in the leet. Cro. Jac. 490, 1. Dove-cote not a nuisance.

1 J.1. c.27. Killing with dogs, nets, or engines.

By stat. 1 *J.* 1. *c.* 27. § 2. Every person who shall shoot at, kill, or destroy any house-dove, or pigeon, with any gun or bow, or shall take, kill, or destroy the same with setting-dogs and nets, or with any manner of nets, snares, engines, or instruments whatsoever, shall, on conviction before two justices where the offence shall be committed or the offender apprehended, by confession, or oath of two witnesses, be committed to gaol for three months, unless he pay to the churchwardens, for the use of the poor of the parish where the offence was committed or the offender apprehended respectively, 20*s.* for every pigeon, or after one month after his commitment become bound by recognisance with two sureties, before two justices, in 20*l.* a-piece, not to offend again in like manner. The recognisance to be returned to the next sessions.

7 & 8 G. 4. c. 29.

By stat. 7 & 8 *G.* 4. *c.* 29. § 33. If any person shall unlawfully and wilfully kill, wound or take any house-dove, or pigeon, under such circumstances as shall not amount to larceny at common law, every such offender being convicted thereof before a justice of the peace, shall forfeit and pay over and above the value of the bird, any sum not exceeding 2*l.*

Note.—And note the several other provisions of this stat. as to the apprehension and punishment of offenders, and proceedings before justices, &c. inserted at length, *ante*, tit. Fish and Fisheries, p. 439. *et. seq.*

Pigeons trespassing.

But if the pigeons come upon my land, and I kill them, the owner hath no remedy against me; though I may be liable to the statutes which make it penal to destroy them. *Cro. Jac.* 492.

Pigeons to go to the heir.

Doves in a dove-house, young and old, shall go to the heir, and not the executor. 1 *Inst.* 8.

(5.) Of Wild Ducks, Wild Geese, and other Water Fowl.

1 J.1. c. 27. Shooting water fowl.

By stat. 1 *J.* 1. *c.* 27. § 2. Every person who shall shoot at, kill, or destroy with any gun, or bow, any mallard, duck, teal, or widgeon,

ing season, and shall be convicted thereof before one justice, by the oath of one witness, he shall for every such fowl so taken forfeit 5*s*., half to the informer, and half to the poor, by distress and sale, rendering the overplus above the penalty and charge of distress; for want of distress, to be committed to the house of correction, not exceeding one month nor less than 14 days, to be whipped and kept to hard labour; and the nets to be seized and destroyed in the presence of the justice. 9 Ann. c. 25.

By stat. 25 *H.* 8. *c.* 11. § 5. No person from *March* 31. to *June* 30. yearly, shall take or destroy the eggs of any mallard, teal, or other water fowl, on pain of a year's imprisonment, and of forfeiting for every egg one penny, half to the king, and half to him that will sue by action of debt; or the justices of the peace may determine the same as in cases of trespass. 25 H. 8. c. 11. Destroying their eggs.

(6.) Of Heath Fowl, Grouse, and Bustards.

By stat. 1 *J.* 1. *c.* 27. § 2. Every person who shall shoot at, kill, or destroy with any gun or bow any grouse, heath-cock, or moor game, shall on conviction before two justices where the offence shall be committed or the offender apprehended, by confession, or oath of two witnesses, be committed to gaol for three months, unless upon conviction he pay to the churchwardens, for the use of the poor where the offence was committed or the offender apprehended, 20*s*. for every fowl, or after one month after his commitment become bound by recognisance, with two sureties in 20*l*. each, before two justices, not to offend again in like manner; the recognisance to be returned to the next sessions. 1 J. 1. c. 27. Shooting.

By stat. 13 *G.* 3. *c.* 55. § 1, 2. 4. No person shall, upon any pretence whatsoever, wilfully take, kill, destroy, carry, sell, buy, or have in his possession or use, any heath-fowl commonly called *Black game*, between *Dec.* 10. and *Aug.* 20.; nor any grouse, commonly called *Red game*, between *Dec.* 10. and *Aug.* 12.; nor any *bustard*, between *Mar.* 1. and *Sept.* 1. in any year, on pain of forfeiting, for the first offence, any sum not exceeding 20*l*. nor less than 10*l*.; and for the second and every subsequent offence, not exceeding 30*l*. nor less than 20*l*.; half to the informer, and half to the poor. 13 G. 3. c. 55. Within what times only to be killed.

§ 3, 4. 9. To be recovered in any of H. M.'s courts of record at *Westminster*, on prosecution within six calendar months after the offence committed. Or the same may be recovered before one justice, information on oath being made before him within three calendar months after the offence committed; which said justice may convict the offender by confession or oath of one witness; and on neglect or refusal to pay, shall levy the same by distress and sale, together with all costs and charges attending the same, rendering the overplus. And such justice may order the offender to be detained in safe custody until return may conveniently be had to the warrant of distress, unless the said offender shall give security, by recognisance or otherwise, to the satisfaction of such justice, for his appearance before him on the day appointed for the return of the warrant of distress, such day not exceeding five days from the time of taking such security. And if no sufficient distress can be had, such justice shall commit the offender to the common gaol or house of correction, there to be kept to hard labour for any Penalties how to be recovered.

13 G.3. c.55. time not exceeding six nor less than three calendar months, unless the forfeiture and all costs and charges attending the prosecution be sooner paid and discharged.

Conviction. § 6, 7. And the conviction shall be drawn up in this or the like form: — *Be it remembered, that on the —— day of —— in the year of our Lord ——* A. B. *having appeared before me —— one of H. M.'s justices of the peace for the county of —— and due proof having been made upon oath by one or more credible witness or witnesses,* [or *by confession of the party*, as the case may be,] *is convicted of* [specifying the offence, with the time and place where the same was committed, and also specifying, if known, that it is the first, second, or any subsequent offence against this act, as the case shall be]. *Given under my hand and seal, the day and year aforesaid.* Which conviction the justice shall cause to be written on parchment, and returned to the next sessions, there to be filed and kept amongst the records. And the clerk of the peace shall grant copies thereof, on payment of 1*s.* for each copy.

Appeal. § 10. If any person shall think himself aggrieved, he may appeal to any general quarter sessions to be holden within four calendar months after the cause of complaint shall arise, giving fourteen days' notice in writing to the justice, and to every other person against whom complaint shall be made; and in four days after such notice, entering into a recognisance before a justice with one sufficient surety, conditioned to try the appeal at, and abide the order of, and pay such costs as shall be awarded by the justices at such sessions. And the justices having received notice of appeal shall return all proceedings had before him, touching the matter of the said appeal, to the justices at such sessions. And the said justices, upon proof of the notice given, and of the entering into such recognisance, shall determine the appeal in a summary way, and award costs to either party, to be levied and recovered as herein-before mentioned for the recovery of penalties and forfeitures under this act. And none of the proceedings shall be

or *Christmas-day*, as is before set forth. *Vide ante*, § VII. (2.) (*Hares*), p. 595, 596.

By stat. 50 *G.* 3. *c.* 67. It is enacted, that no person shall on any pretence whatever take, kill, or destroy, or attempt to take, kill, or destroy, in the counties of *Somerset* and *Devon*, any heath-fowl, commonly called *Black game*, between the 10th of *December* and the 1st of *September* in any year, and every person shall for every heath-fowl so taken, killed, or destroyed, and for every attempt to kill, take, and destroy such heath-fowl contrary to the true intent of this act, be liable to the same forfeitures and penalties, to be recovered in the same manner and subject to the like appeal, and the same provisions in every respect whatever as by the 13 *G.* 3. *c.* 55. are enacted in respect of any offence committed against the said acts. 50 G. 3. c. 67. Heath-fowl in Somerset and Devon.

And by stat. 43 *G.* 3. *c.* 112. Persons taking or killing in the *New Forest* any *Black game*, between *Dec.* 10. and *Sept.* 1. shall be liable to the forfeitures and penalties of stat. 13 *G.* 3. *c.* 55. 43 G. 3. c. 112. Black game in the New Forest.

By stat. 4 & 5 *W.* 3. *c.* 23. § 11. For the better preserving the red and black game of grouse commonly called heath-cocks, or heath-polts, no persons whatsoever on any mountains, hills, heaths, moors, forests, chases, or other wastes, shall presume to burn, between *Feb.* 2. and *June* 24., any grig, ling, heath, furze, goss, or fern; on pain of being committed to the house of correction, for any time not exceeding one month, and not less than ten days, there to be whipped and kept to hard labour. 4 & 5 W. 3. c. 23. Burning ling.

As here is no method of conviction directed for this offence, the justices of the peace seem to have no cognisance thereof; but the trial and conviction must be at the assizes, or in the courts at *Westminster*.

In a recent case, the court of *K. B.* have decided that grouse are not birds of warren. *The Duke of Devonshire* v. *Lodge*, 7 *Barn. & Cres.* 36. Grouse are not birds of warren.

In stat. 5 *Ann.* *c.* 14. There are particular directions concerning the burning of ling, heath, or brakes in *Sherwood Forest*, and other places in *Nottinghamshire*, which not being of general concern are here omitted.

(7.) Of Herons.

By stat. 1 *J.* 1. *c.* 27. § 2. Every person who shall shoot at, kill, or destroy any heron with gun or bow, shall on conviction before two justices, by confession, or oath of two witnesses, be committed to gaol for three months, unless on conviction he pay to the churchwardens for the use of the poor 20*s.* for each heron, or after one month from his commitment become bound by recognisance with two sureties in 20*l.* each, before two justices, not to offend again in like manner: the recognisance to be returned to the next sessions. 1 J. 1. c. 27. Shooting herons.

By stat. 19 *H.* 7. *c.* 11. No person, without his own ground, shall slay, take, or cause to be taken, by means of craft or engine, any herons, unless it be with hawking, or with long bows; on pain of 6*s.* 8*d.* to him who shall sue by action of debt; or the sessions may call before them persons suspected, and examine them; and if found in default, may commit them till they have found surety for payment of the forfeiture to the king; 19 H. 7. c. 11. None shall take but by hawking.

19 H.7. c.11. and the justices shall have the tenth part of the forfeiture for their labour.

Young herons. No person, without his own ground, shall take any young herons out of the nest; on pain of 10*s.* in like manner for every young heron. *Id.*

25 H.8. c.11. Eggs. And by stat. 25 *H.*8. *c.*11. If any person from *March* 31. to *June* 30. shall take or destroy the eggs of any heron, he shall be imprisoned for a year, and forfeit for every egg, 8*d.*, half to the king, and half to him that will sue by action of debt, or before the justices of the peace.

(8.) Of other Wild fowl.

25 H.8. c.11. In general; by stat. 25 *H.*8. *c.*11. no manner of person from the last day of *March* to the last day of *June* yearly shall by day or night take or destroy any eggs of any kind of wild fowl, from or in any nest or place, where they shall chance to be laid by any kind of the same wild fowl, on pain of imprisonment for a year, and to forfeit for every egg of a bustard 20*d.*, of a bittour or shovelard 8*d.*, and of other wild fowl (except crows, ravens, boscards, and other fowl not used to be eaten) 1*d.*; half to the king and half to him that will sue by action of debt. Also the justices of the peace may determine the same, as in cases of trespass. (*a*)

8 El. c.15. (*a*) With regard to fowl not used to be eaten, together with certain other noxious animals, there were provisions made by an ancient statute, viz. 8 *El.* *c.*15, intituled *An act for the preservation of graine*, which it were to be wished might be revived with a proper consideration of the difference of the value of money betwixt that time and the present; by which it was required that the churchwardens should levy by an assessment, and pay for the heads of every three old crowes, choughes, or rookes, 1*d.*; of sixe young crowes, choughes, or rookes, 1*d.*; and for every sixe egges of any of them, 1*d.*; for every 12 stares' heads, 1*d.*; for every heade of

A. Appointment (*b*) of a Gamekeeper to kill Game; on Stats. 22 & 23 *C.* 2. *c.* 25. § 2., 5 *Ann. c.* 14. § 4., and 48 *G.* 3. *c.* 93. [See the Gamekeeper's Certificate, according to Stat. 52 *G.* 3. *c.* 93. Sched. (N) (A) (B) (C) (D), Vol. V. tit. Taxes (*Certificate*).

A.

I A. L. *esquire, lord of the manor of* ———, *in the county of* ———, *do hereby nominate, authorise, and appoint* A. G. *of* P. *in the county of* ———, *yeoman* [or *gentleman*, as the case may be], *to be a gamekeeper of, in, and to my said manor, with full power, license, and authority, within and upon my said manor, to kill any hare, pheasant, partridge, or any other game whatsoever, for my sole use and benefit* [or, *for the use and benefit of him the said* A. G. or, *for the use and benefit of* A. S. *of* ———, *in the county of* ———, as the case may be]; *and also to take and seize all such guns, bows, greyhounds, setting-dogs, lurchers, or other dogs to kill hares or conies; ferrets, trammels, lowbels, hays, or other nets, harepipes, snares, or other engines, for the taking and killing of conies, hares, pheasants, partridges, or other game, as within the precincts of my said manor of* ——— *shall be used by any person or persons who by law are prohibited to keep or use the same. Given under my hand and seal, this* ——— *day of* ——— *in the* ——— *year, &c.*

Signed, sealed, and delivered in the presence of J. W.

A. a. Deputation of a Gamekeeper for preservation of the Game only.

A. a.

TO *all to whom these presents shall come, I,* W. L., *&c. esquire, lord of the manor of* S. *in the county of* H. *send greeting: Know ye, that I, the said* W. L. *have appointed, constituted, and empowered, and by these presents do appoint, constitute and empower* J. W. *to be gamekeeper of, in, and to my said manor of* S. *and all the royalties, rights, members, and appurtenances thereto belonging, during my pleasure, to keep and preserve the game within and upon the said manor, but not to kill, or in anywise to pursue or destroy the same; and for the purpose of enabling the said* J. W. *to preserve the game within the said manor, I do hereby give and grant unto him, during such my pleasure, full power and authority to seize and take all, and all manner of guns, greyhounds, setting-dogs, ferrets, trammels, lowbells, hays, or other nets, harepipes, snares, or other engines for taking conies, hares, pheasants, partridges, or other game, and all manner of fishing nets, angles, leashers, pitchers, and other instruments or engines for taking of fish used within the said manor, and the royalties, members, and precincts thereof, by any person or persons whomsoever prohibited by the laws of this realm, to use, employ, and keep the same, as any other gamekeeper may lawfully do. And further, I do hereby give and grant unto him the said* J. W. *during my pleasure, full power and authority to do all and every act and acts, thing and things, which by the laws of this realm are requisite*

(*a*) By stat. 55 *G.* 3. *c.* 184. this appointment must be on a 35*s.* stamp.

and necessary for the preservation of the game within the said manor and premises, and for the discovery and conviction of offenders in the destruction and pursuit of the same, against the laws and statutes in that case made and provided. In witness whereof, I the said W. L. *have hereunto set my hand and seal, this ——— day of ——— in the year, &c.*

Signed, sealed, and delivered in the presence of J. W.

B. **B. Form of** Information to be exhibited before two (*a*) Commissioners, or one Justice of the Peace, being a Commissioner, on stat. 52 *G.* 3. *c.* 93. Sch. L. Rule XI. (*ante*, p. 579.) for not producing a Certificate on Demand, &c. See also stat. 54 *G.* 3. *c.* 141.

County of ——— to wit. } *THE information and complaint of* A. I., *labourer, made before us* [*two, three,* or more, as the case may be; or, if before one justice, say, *before me one of his majesty's justices of the peace of and for the* (*county, riding, city, town,* &c. as the case may be,) *and also one of the commissioners,* &c.] *of the commissioners for executing an act made and passed in the 52d year of the reign of his late majesty king* George *the third, intituled* An act for granting to his majesty certain new and additional duties of assessed taxes, and for consolidating the same with the former duties of assessed taxes, *and the several other acts relating to the said duties of assessed taxes, appointed to act as such commissioners* [or, *commissioner,* if before one justice, he being a commissioner], *in the district* [or *division,* as the case may be] *of* ———, *and on the* ——— *day of* ——— *in the* ——— *year of the reign of our sovereign lord* George *the fourth, at the parish of* ——— *in the district* [or *division,* as the case may be] *aforesaid, and in this county,* &c. *of* ———: *Who saith that* A. O. *of the parish and county aforesaid* ——— *heretofore,*

the said act of aiding and assisting as aforesaid, and in the said act mentioned, being then and there done in the company or presence of one A. G. *who did act therein by virtue of a deputation or appointment for the manor of* Dale, *granted by* C. D. *esq. and not in the company or presence, nor for the use of another person who had then duly obtained a certificate in his own right according to the directions of the said act, nor who therein did by virtue of such certificate then and there use his own dog,* (or *gun, net, or other engine,* naming the same as before directed,) *for the taking of,*" (as before)], *by one* A. S., *the said* A. S. *then and there being an assessor or collector of the said parish of* ———, [or *a commissioner for the execution of the said act, passed in the 52d year aforesaid, acting for the said county of* Stafford, or *riding, division, or place,* as the case may require, or *by* L. B. *lord or lady, or gamekeeper of the manor of*——, *which the said* A. O. *then was,* or by any of the other persons enumerated in Rule XI., as the case may be,] *and that the said* A. S. *then and there demanded and required from the said* A. O. *using such dog* [*gun, net,* &c. as the fact is] *as aforesaid for the purpose aforesaid,* [or *taking or killing,* &c. as aforesaid,] *the production of a certificate issued to him for that purpose, and that the said* A. O. [if the party had taken out a certificate, then say, *wilfully refused to produce, and did not produce*] *did not produce any such certificate, and that no such certificate was produced to the said* A. S.; *and that thereupon the said* A. S. *having made such demand as aforesaid, and no such certificate being produced to him, the said* A. S. *then and there required the said* A. O. *forthwith to declare to him the said* A. S. *the Christian and surname, and place of residence of him the said* A. O., *and also the parish or place (if any) in which the said* A. O. *had been assessed to the duties granted by the said act passed in the 52d year aforesaid. And that the said* A. O. *after such demand made,* [*and in default of the production of a certificate issued to him for the using such dog,* &c. (as the fact is), *as aforesaid, or the purpose aforesaid* [or *for the taking or killing,* or *the aiding and assisting in the taking or killing of such game,* &c. as the case may require,] *then and there wilfully refused to give in to the said* A. S. *the Christian and surname, and place of abode of him the said* A. O.] [or instead of the words included in brackets, say, *then and there produced to the said* A. S. *a false certificate or a fictitious certificate;* or *then and there gave to the said* —— *a false name, or a false place of residence, or a false place of assessment, or a fictitious name, or a fictitious place of residence, or a fictitious place of assessment,* as the case may be], *contrary to the form of the statute in that case made and provided: and by means of the premises, and by force of the statute in that case made and provided, the said* A. O. *hath forfeited for his said offence the sum of 20l. Whereupon the said* A. I. *prays the judgment of us the said commissioners* [or *me the said justice and commissioner,* as the case may require] *in the premises, and that the said* A. O. *may be summoned to answer the premises before us the commissioners aforesaid,* [or *me the said justice and commissioner,* as the case may require].

Exhibited before us this ——— *day of* ———,
in the year of our Lord, 18—. A. I.

c. **(C) Form of Information to be exhibited before two Commissioners, or one Justice of the Peace, being a Commissioner, on Stat. 52 G. 3. c. 93. Sch. L. Rule XII. (*ante*, p. 579.) for using a Dog, Net, Gun, &c. without having taken out a Certificate.**

County of } to wit. } *THE information and complaint of* A. I. *labourer, made before us, two* [*three, or more,* as the case may be; or if before one justice (*a*) say, *before me, one of his majesty's justices of the peace of and for the county,* &c. as the case may be, *and also one of the commissioners, &c.*] *of the commissioners for executing an act made and passed in the fifty-second year of the reign of his late majesty* G. 3. *intituled* An act for granting to his majesty certain new and additional duties of assessed taxes, and for consolidating the same with the former duties of assessed taxes, *and the several other acts relating to the said duties of assessed taxes, appointed to act as such commissioners* [or *commissioner*, if before one justice, he being a commissioner], *in the* [*district* or *division*, as the case may be] *of* ——, *on the* —— *day of* —— *in the* —— *year of the reign of our sovereign lord* George *the fourth, at the parish of* —— *in the* [*district* or *division*, as the case may be] *aforesaid, and in this* [*riding, city, town,* &c. as the case may be, or] *county of* Stafford: *Who saith, that* A. O. *of the parish and county aforesaid —— heretofore, and within three calendar months next before the date of this information, to wit, on the* —— *day of* ——, *at the parish of* —— *in the county aforesaid, did use a* [*dog, gun, net, or other engine*, as the case may be, describing the engine by name; but if for woodcocks or snipes, the use of nets or springes is exempted from the penalty] *for the purpose of taking and killing* [*game, woodcock, snipe, quail, or landrail, or conies.* If for conies, add after the word *there*, " *in a certain warren called the* ——, *situate and*

ficate, then and there use his own dog, (or *gun, net, or other engine,* naming the same as before directed), *for the taking of* (as before)"] *without having obtained such certificate as is directed by the statute in that case made and provided, in order to an assessment for the year wherein the said* A. O. *did so use such* [*dog,* &c. as before; or *did so take game,* &c. or *did so kill game,* &c. or *did so assist in the taking* or *in the killing game,* &c. as before, and as the case may require], *contrary to the form of the statute in that case made and provided; and by means of the premises, and by force of the statute in that case made and provided, the said* A. O. *hath forfeited for his said offence the sum of* 20*l. Whereupon the said* A. I. *prayeth the judgment of us the said commissioners* [or "*me the said justice and commissioner,*" as the case may require] *in the premises, and that the said* A. O. *may be summoned to answer the premises before us the commissioners aforesaid.* A. I.

Exhibited before us the ——— *day of* ———, *in the year of our Lord,* 18 .

D.

(D) General Form of Summons.

To ———
of the parish of ———
in the county of ———.

County of ———, to wit. } *WHEREAS information and complaint hath been made before us two* [describe the commissioners, or *one* commissioner being a justice, or one justice, as in the information] *of the commissioners for executing an act made and passed in the 52d year of the reign of his late majesty G.* 3., *intituled* An act for granting to his majesty certain new and additional duties of assessed taxes, and for consolidating the same with the former duties of assessed taxes, *and also the several acts relating to the said duties of assessed taxes, appointed to act as such commissioners* [as before,] *in the* ——— *of* ———, *that you on the* ——— *day of* ———, *at the parish of* ——— *in the said county, did* [here insert the whole of the information in the past tense.]

These are to require you the said A. O. *to appear before us at* ——— *in the said county of* ———, *on the* ——— *day of* ——— *at the hour of* ——— *in the* ——— *noon of the same day* [*to answer to the said information and complaint, and to be further dealt with according to law*]: [if the summons is to a witness, omit the words in brackets, and introduce "*to give evidence touching the matters contained in the said information, on the part of the said* A. B. (*the informant*), or *of the said* A. O. *the defendant,*" as the fact is.]

Given under our hands and seals, this ——— *day of* ———, *in the year of our Lord* 18—.

(E) Conviction for killing Game without a lawful Certificate. E.

See stat. 52 G. 3. *c.* 93. *Sch.* L. *Rule* XV. *ante,* p. 581.

F. Distress Warrant thereon. F.

County of ———, to wit. } To the constable of ——— in the said county.

WHEREAS A. O., *of* ——— *in the said county,* [labourer &c.] *is this day convicted before me* S. P. *esq.* [or *us,* &c.] one of his

majesty's justices of the peace in and for the said county, [and, if it be so, also *one of the commissioners,* &c.] *upon the oath of* A. B. *a credible witness, for that he the said* A. O. *on the* ——— *day of* ——— *in the* ——— *year of the reign of his majesty king* George *the* ——— &c. *at* ——— *in the said county, did use a certain dog* [*net*, or *engine*, as the fact is] *for the taking or destruction of game, and did thereby and therewith take, kill, and destroy a hare* [or as the case may be], *without having such certificate as is required by law for that purpose, whereby the said* A. O. *hath forfeited the sum of* 20*l*. *These are therefore in his said majesty's name to command you to levy the said sum by distress of the goods of him the said* A. O., *and if within the space of* (*four*) *days next after such distress by you taken, the said sum shall not be paid, that then you do sell the said goods so by you distrained, and out of the money arising by such sale you do pay the sum of* ——— *to* A. B. *of* ———, *in the said county, one of the collectors of assessed taxes for the parish of* ——— *aforesaid, for the use of his majesty; returning the overplus* (*if any*) *on demand unto him the said* A. O. *And if sufficient distress cannot be found of the goods of the said* A. O. *whereon to levy the said sum of* 20*l*., *that then you certify the same to me, together with the return of this precept. Given under my hand and seal, the* ——— *day of*, &c.

F. (F) Endorsement of Costs on Warrant of Distress.

County of ——— } *I the within-named justice of the peace and commissioner do hereby endorse and declare the sum of* ——— *to be the reasonable costs attending the information, conviction, and warrant of distress* (*as on the other side hereof expressed*) *settled by me to be levied by the said constable of* ——— *and paid to the said informer. Given under my hand the day and year last within written.*

J. P.

G. (G) Commitment for want of Distress.

said constable of ——— *aforesaid, to apprehend the body of the said* A. O. *and him safely to convey to the house of correction at* ——— *in the said county, and there deliver him to the said keeper thereof, together with this precept. And I do hereby command you, the said keeper of the said house of correction, to receive into your custody in the said house of correction the said* A. O., *and him there safely to keep for the space of six calendar months, unless such penalty shall be sooner paid; and for so doing this shall be your sufficient warrant. Given under my hand and seal the* ——— *day of* ———, &c.

(H) Recognisance on Appeal against a Conviction for using a Gun, &c. to kill Game without having taken out a Certificate. Stat. 52 G. 3. c. 96. § 13. *Sch.* L. *ante*, p. 580. H.

[From *Y. C. P.* 99.]

County of ——— } *BE it remembered, that on the* ——— *day of* ——— *in the* ——— *year of the reign of our sovereign lord* George *the fourth, of the united kingdom of* Great Britain *and* Ireland *king, defender of the faith,* A. O. *of* ——— *in the said county, gentleman,* [and if with sureties, add B. O. of ———, *yeoman,* and C. O. *of* ———, *grocer,* but the words of the act are "upon giving security," which expression seems to leave a discretionary power,] came before ——— [&c. &c. as the case may be], *and acknowledged to owe to our said lord the king the sum of* ———, [&c. &c. as the case may be,] *of lawful money of* Great Britain, *to be levied of his* [or *their*] *goods and chattels, lands and tenements,* [respectively, if with sureties,] *to the use of our said lord the king, his heirs and successors, if the said* A. O. *shall make default in the condition hereunder written:—*

Whereas the above-bound A. O. *has been this day duly convicted before me, the said justice of the peace and commissioner,* [or *us,* &c. as the case may be,] *upon the oath of* A. W., *a credible witness, for that he the said* A. O., *on the* ——— *day of* ——— *last, at* ——— *in the parish of* ——— *in the said county, did use a certain dog called a greyhound* [or as the case may be], *for the taking or destruction of game, without having such certificate as is required by law for that purpose, whereby the said* A. O. *has forfeited the sum of twenty pounds* [if mitigated, say, *which I* (or *we*) *have mitigated to ten pounds*]: *the condition of this recognisance is such, that if the above-bound* A. O. *shall appear at the next general quarter sessions of peace, to be holden at* ———, *in and for the said county of* ———, *and shall then and there try such appeal and abide the judgment of the said court of quarter sessions, and pay the costs occasioned by such information, conviction, and appeal, as shall seem meet to and be awarded by the justices at such general quarter sessions, then this recognisance to be void, otherwise of force.*

Acknowledged before me [or *us*].

I. **(I) Warrant** to search for Dogs and Engines; on Stat. 22 & 23 *C.* 2. *c.* 25. § 2. *ante*, p. 542.

County of ——— } To ———.

WHEREAS complaint hath been made unto me, J. P. *esquire, one of his majesty's justices of the peace in and for the said county, upon the oath of* A. I. *of* ——— *in the said county, yeoman, that he the said* A. I. *hath good ground to suspect and doth suspect that* A. O. *of* ——— *aforesaid, in the county aforesaid, yeoman, being a person in no respect qualified by the laws of this realm so to do, hath and keepeth in his custody a greyhound* [*gun, net,* &c.] *to kill, and destroy the game: These are therefore to command you in his majesty's name to enter into and search in the day-time the houses, out-houses, and other places of him the said* A. O. *at* ——— *aforesaid, and if you there find any greyhound,* &c. *that you seize and keep the same for the use of* A. L. *esquire, lord of the manor of* ———, *in which manor the said houses, out-houses, and other places are situate and do lie,* [or if net, gun, &c. *that you* cut in pieces or *destroy the same*]. *Given under my hand and seal the* ——— *day of* ———, *in the* ——— *year,* &c.

N. B. Though this warrant is drawn in the terms of the act, a justice of peace will do well (except he has very strong grounds for extending it) to confine the search and cutting to hays, trammels, lowbels, harepipes, and snares.

K. **(K) Information** against a Person for keeping and using Dogs, or Engines to destroy Game, not being qualified: on Stat. 5 *Ann. c.* 14. § 4. *ante*, p. 513.

County of ———. } *BE it remembered, that on this* ——— *day of* ———, *in the year of our Lord* ———, *at* ——— *in the*

[redacted]

hand and seal, to kill or take any game whatsoever in or upon such manor, or other royalty, nor then being a person duly appointed and deputed by any lord or lady of any manor to be a gamekeeper to any such manor with authority as gamekeeper to kill game within the same for the use of such lord or lady, or for his own use, or for the use of any other person or persons whatsoever, nor then being a person in any manner whatsoever duly qualified, empowered, or authorised by the laws of this realm either to take, kill, or destroy any sort of game whatsoever, either for himself or for any other person or persons whatsoever, or to keep or use any greyhounds, setting-dogs, hays, lurchers, tunnels, or any other engine for the destruction of the game of this kingdom,) did at the parish of ——— in the county of ——— aforesaid, unlawfully keep and use [or, "*keep*" *or* "*use*," as the case may be,] *a lurcher* (or as the case may be) *to kill and destroy the game, contrary to the form of the statute in that case made and provided: whereby he hath forfeited the sum of 5l.; and thereupon he the said* A. I. *prayeth the judgment of me the said justice in the premises, and that he may have one moiety of the said forfeiture according to the form of the statute in that case made, and that the said* A. O. *may be summoned to answer the premises before me the justice aforesaid.* A. I.

Taken before me J. P.

(L) Summons thereupon. L.

To the constable of ——— in the county of ———.

County of ——— to wit. } *WHEREAS information and complaint have been made before me* J. P. *esquire, one of his majesty's justices of the peace for the said county, that* A. O. *of ——— in the said county, labourer, within three months now last past, that is to say, on the ——— day of ——— in the year of our Lord ———, being a person not then having lands and tenements, or any other estate of inheritance in his own or his wife's right, of the clear yearly value of one hundred pounds per* annum *or for term of life, nor then having lease or leases of ninety-nine years or for any longer term, of the clear yearly value of one hundred and fifty pounds, nor then being the son and heir apparent of an esquire or other person of higher degree, nor then being the owner or keeper of any forest, park, chase, or warren being stocked with deer or conies for his necessary use in respect of such forest, park, chase, or warren, nor then being lord of any manor, lordship, or royalty, nor then being gamekeeper within any lordship, manor, or other royalty,* [or, if the defendant be a gamekeeper sporting out of his manor, then as in the information,] *duly authorised and empowered by the lord or lady of such manor, or other royalty, by writing under his or her hand and seal to kill, or take any game whatsoever in or upon such manor, or other royalty, nor then being a person duly appointed and deputed by any lord or lady of any manor to be a gamekeeper to any such manor, with authority as gamekeeper to kill game within the same, for the use of such lord or lady, or for his own use, or for the use of any other person or persons whatsoever, nor then being a person in any manner whatsoever duly qualified, empowered, or authorised by the laws of this realm, either to take, kill, or destroy any sort of game whatsoever, either for himself, or for any other person or persons whatsoever, nor to keep or use any* greyhounds, setting-

dogs, hays, lurchers, tunnels, or any other engine for the destruction of the game of this kingdom, did, at the parish of ———, *in the said county of* ———, *unlawfully keep and use* [or, "*keep*" or "*use*," as the case may be,] *a lurcher* [or as the case may be] *to kill and destroy the game, contrary to the form of the statute in that case made and provided; whereby he hath forfeited the sum of 5l., to be applied as the act directs: These are, therefore, to require you forthwith to summon the said* A. O. *to appear before me at* ——— *in the said county, on* ——— *the* ——— *day of* ———, *at the hour of* ——— *in the* ——— *noon, to answer to the said information and complaint, and to be further dealt with according to law; and be you then there, to certify what you shall have done in the execution hereof. Herein fail not. Given under my hand and seal this* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* ———.

J. P. (*L. S.*)

M. **(M) Form** of a Conviction on Stat. 5 *Anne*, *c.* 14. § 4. *ante*, p. 543. **for** keeping and using a Lurcher to kill and **destroy** the Game.

County [*or as the case may be,*] of ——— } *BE it remembered, that on the* ——— *day of* ———, *in the year of our Lord* ———, *at* ——— *in the county of* ———, A. I. *of* ——— *in the county of* ———, *labourer* [or as the case may be], *personally came before me* J. P. *esquire, one of his majesty's justices of the peace for the said county of* ———, *and informed me that* A. O. *of* ——— *in the said county, labourer, within three months now last past, that is to say, on the* ——— *day of* ———, *in the year of our Lord* ———, [or, *aforesaid*, as the case may be,] (*the said* A. O. *being a person not then having lands and tenements, or any other estate or inheritance in his own or his wife's right, of the clear yearly value of one hundred pounds* per annum, *or for term of life, nor then having any lease or leases of ninety-nine years or*

[redacted]

game of this kingdom,) *did, at the parish of* ——— *in the county of* ——— *aforesaid, unlawfully keep and use* [or, "*keep,*" or "*use,*" as the case may be,] *a lurcher to kill and destroy the game, contrary to the form of the statute in such case made and provided: Whereupon the said* A. O., *after being duly summoned to answer the said charge, appeared before me on the* ——— *day of* ——— *in the said year* ———, *at* ——— *in the said county of* ———, *and having heard the charge contained in the said information, declared he was not guilty of the said offence;* [or, as the case may happen to be, *did not appear before me pursuant to the said summons; or, did neglect and refuse to make any defence against the said charge*]. *Nevertheless I, the said justice did proceed to examine into the truth of the charge contained in the said information; and on the said day of* ——— *at* ——— *aforesaid, one credible witness, to wit,* A. W. *of* ——— *in the county of* ———, *upon his oath deposeth and saith,* [if *A. O.* be present say, *in the presence and hearing of the said* A. O.] *that within three months now last past, to wit, on* ——— *the* ——— *day of* ——— *in the year* ———, *the said* A. O. *at the parish of* ——— *in the said county of* ———, *did* [here state the evidence in support of the charge, and as nearly as possible in the words used by the witness or witnesses]. *And further, that the said* A. O. *to the best of the knowledge and belief of him the said* A. W. *was not then, to wit, on the said* ——— *day of* ——— *aforesaid, in any manner whatsoever duly qualified, empowered, or authorised by the laws of this realm, to take, kill, or destroy any sort of game either for himself or for any other person or persons whatsoever, or to keep or use a lurcher for that purpose;* [if more than one witness be examined, state the evidence given by each; or, if the defendant confess, instead of stating the evidence, say,] *and the said* A. O. *acknowledged and voluntarily confessed the same to be true: Therefore, it manifestly appearing to me that he the said* A. O. *is guilty of the offence charged upon him in the said information, I do hereby convict him of the offence aforesaid; and do declare and adjudge that he, the said* A. O. *hath forfeited the sum of five pounds of lawful money of* Great Britain, *for the offence aforesaid, to be distributed according to the form of the statute in that case made and provided. Given under my hand and seal the* ——— *day of* ——— *in the year of our Lord one thousand eight hundred and* ———.

(N) Warrant to distrain *5l.* for keeping Dogs or Engines: on Stat. 5 *Anne c.* 14. § 4. *ante*, p. 543. N.

County of ——— To the constable of ———.

WHEREAS A. O. *of* ———, *in the said county, labourer,* [&c.] *is this day convicted before me,* J. P. *esquire, one of his majesty's justices of the peace, in and for the said county, upon the oath of* A. W. *a credible witness, for that he the said* A. O. *being a person not qualified by the laws of this realm so to do, on the* ——— *day of* ———, *in the* ——— *year of the reign of* ———, *did keep and use,* [or "*keep,*" or "*use,*"] *in the parish of* ——— *aforesaid, in the county aforesaid, a certain dog called a greyhound to kill and destroy the game, by virtue whereof he the said* A. O. *hath forfeited the sum of 5l. to be distributed as hereinafter is mentioned:* These

are therefore in his said majesty's name to command you to levy the said sum by distress of the goods of him the said A. O., *and if within the space of* ——— (a) *days next after such distress by you taken, the said sum, together with reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods so by you distrained, and out of the money arising by such sale that you do pay one half of the said sum of 5l. to* A. I. *of* ——— *in the said county, yeoman, who informed me of the said offence, and the other half of the said sum of 5l. to the overseers of the poor of the parish of* ——— *aforesaid, where the said offence was committed, for the use of the poor of the said parish; returning the overplus on demand unto him the said* A. O., *the reasonable charges of taking, keeping, and selling the said distress being first deducted. And if sufficient distress cannot be found of the goods of the said* A. O. *whereon to levy the said sum of 5l., that then you certify the same to me, together with the return of this precept. Given under my hand and seal, the* ——— *day of* ——— *in the* ——— *year of* ———.

Constable's Return that no sufficient Distress can be obtained, endorsed on the Warrant.

L. M. *constable of* ——— *within mentioned, maketh oath this* ——— *day of* ——— *in the year within mentioned, that he hath made diligent search for, but doth not know of, nor can find sufficient goods and chattels of* A. O. *within mentioned, whereon to levy the within-mentioned sum of 5l.* L. M.

Sworn before me the justice within mentioned.

R. B.

o. **(O.) Commitment for want of Distress, for keeping Dogs or Engines;** on Stat. 5 *Ann. c.* 14. § 4. *ante*, p. 543.

County of { To the constable of ——— in the said county, and

aforesaid, but that no sufficient distress can be had whereon to levy the same: These are therefore to command you the said constable of —— *aforesaid to apprehend the body of the said* A. O. *and him safely to convey to the house of correction at* ——— *in the said county, and there deliver him to the said keeper thereof, together with this precept. And I do hereby command you the said keeper of the said house of correction to receive into your custody in the said house of correction the said* A. O., *and him there safely to keep for the space of three months; and for so doing this shall be your sufficient warrant. Given under my hand and seal the* ——— *day of* ——— *in the* ——— *year, &c.*

(P.) *Certiorari* Bond, on a Conviction for keeping Dogs or Engines; on Stat. 5 *Ann. c.* 14. § 2. *ante*, p. 566. P.

KNOW all men by these presents, &c. Whereas the above-bound A. O. *was lately convicted before* J. P. *esquire, one of his majesty's justices of the peace in and for the county of* ——— *aforesaid, of keeping and using at* ——— *aforesaid, in the said county, a greyhound, to kill and destroy the game; and whereas the said* A. O. *hath since his said conviction sued out his majesty's writ of* certiorari *to remove the same and the proceedings thereupon before the king himself wherever he shall be in* England *on* ——— [the day of the return of the certiorari]: *The condition of the above obligation is such, that if the above-bound* A. O. *do and shall (according to the true intent and meaning of the statute in that case made) well and truly pay to the said* A. I. *within* 14 *days after the said conviction shall be confirmed, or a* procedendo *granted thereupon, his full costs and charges which he shall sustain touching or concerning the said conviction and removal thereof by the said writ of* certiorari; *then the above-written obligation shall be void, otherwise of force.*

(Q.) Warrant against an Innkeeper for having Game in his Possession; on Stat. 5 *Ann. c.* 14. § 2. *ante*, p. 567. Q.

County of ———. To the constable of ———.

WHEREAS A. I. *of* ——— *hath this day made information and complaint upon oath before me,* J. P. *esquire, one of his majesty's justices of the peace in and for the said county, that on the* ——— *day of* ——— *now last past,* A. O. *of* ——— *in the parish of* ——— *in the county aforesaid, innkeeper, at* ——— *aforesaid, in the parish and county aforesaid, in the house of him the said* A. O. *then and there had in his possession two partridges* [or, *did offer to sell two partridges,* or as the case shall be,] *he the said* A. O. *being a person not then having lands or tenements or any other estate of inheritance in his own right or in his wife's right of the clear yearly value of* 100*l. per annum, or for term of life, nor then having lease or leases of* 99 *years, or for any longer term, of the clear yearly value of* 150*l., nor then being the son and heir apparent of an esquire, or other person of higher degree, nor then being the owner or keeper of any forest, park, chase, or warren being stocked with deer or conies for his necessary use in respect of such forest, park, chase, or warren, nor then being lord of any manor, lordship, or royalty, nor then being gamekeeper of any lord or lady*

of any lordship, manor, or royalty, duly made, constituted, or appointed by writing under his or her hand and seal, to take, kill, or destroy the game or any sort of game whatsoever in or upon any lordship, manor, or royalty, nor then being a person duly appointed and deputed by any lord or lady of any manor to be a gamekeeper to any manor, with authority as gamekeeper to kill game within any manor for the use of such lord or lady, or for his own use, or for the use of any other person or persons whatsoever, nor then being a person in any manner whatsoever qualified or authorised to kill game, or to have the said two partridges in his custody or possession, against the form of the statute in that case made and provided: These are therefore to command you, to bring the said A. O. *before me or some other of his majesty's justices of the peace for the said county, to answer the premises, and to be further dealt with according to law. Given under my hand and seal, the ——— day of ——— in the ——— year,* &c.

R. **R. Conviction** of an Innkeeper, for having two Partridges in his Custody and selling the same; on Stats. 5 *Ann. c.* 14. and 28 *G.* 2. *c.* 12. *ante*, p. 567.

County of ——— } *BE it remembered, that on the ——— day of ———, in the —— year of our Lord ——, at* W. *in the county of ———,* A. I. *of* L. *in the county of ——— esquire, personally came before me* J. P. *clerk, one of his majesty's justices of the peace for the said county of ———, and informed me that* A. O. *of ——— in the county of ———, innkeeper, on the ——— day of ———, at ———, in the said county of ———, being a person not then having lands or tenements or any other estate of inheritance in his own right or in his wife's right of the clear yearly value of* 100*l.* per annum, *or for term of life, nor then having lease or leases of* 99 *years, or for any longer term, of the clear yearly value of* 150*l.*, *nor then being the son or heir apparent of an esquire or other person of higher degree, nor then hav-*

[redacted]

of the said offence. Whereupon I the said justice did proceed to examine into the truth of the charge contained in the said information, and on the ——— *day of* ——— *aforesaid, at the parish of* ——— *aforesaid, in the said county of* ———, *one credible witness, to wit,* J. W. *of* H. *in the said county of* ——— *yeoman, upon his oath deposeth and saith, in the presence of the said* O. A., *that within three months next before the said information was made before me the said justice by the said* A. I., *to wit, on the* ——— *day of* ——— *in the year* ———, *at the parish of* M. *aforesaid, he the said* A. O. *being a person not then having lands, tenements, or any other estate of inheritance in his own right or in his wife's right of the clear yearly value of* 100*l.* per annum, *or for term of life, nor then having lease or leases of* 99 *years, or for any longer term, of the clear yearly value of* 150*l. nor then being the son and heir apparent of an esquire or other person of higher degree, nor then being the owner or keeper of any forest, park, chase, or warren being stocked with deer or conies for his necessary use in respect of such forest, park, chase, or warren, nor then being lord of any manor, lordship, or royalty, nor then being gamekeeper of any lord or lady of any lordship, manor, or royalty duly made, constituted, or appointed by writing under his or her hand and seal to take, kill, or destroy the game or any sort of game whatsoever, in or upon any lordship, manor, or royalty, nor then being a person duly appointed and deputed by any lord or lady of any manor to be a gamekeeper to any manor, with authority as gamekeeper to kill game within any manor for the use of such lord or lady, or for his own use, or for the use of any other person or persons whatsoever, nor then being a person in any manner whatsoever qualified or authorised to kill game, and then and there being an innkeeper, unlawfully had in his custody two partridges, and did then and there sell* (or, *offer to sell*) *the same, contrary to the form of the statute in that case made and provided.* [State the evidence as nearly as possible in the words used by the witness, and if more than one witness be examined, state the evidence given by each.] *Therefore it manifestly appearing to me that he the said* A. O. *is guilty of the offence charged upon him in the said information, I do hereby convict him of the offence aforesaid, and do declare and adjudge that he the said* A. O. *hath forfeited the sum of ten pounds of lawful money of* Great Britain (*that is to say, the sum of five pounds for each of the said partridges,*) *for the offence aforesaid, to be distributed according to the form of the statute in that case made and provided.*

Given under my hand and seal this ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* ———.

J. P. (*L. S.*)

formation should be confined to that part; if he sold, omit the offer to sale; if he offered to sell, omit the allegation that he actually sold.

Though stat. 5 *Ann. c.* 14. makes no distinction between those *innkeepers* who are qualified by estate and those who are not, it is more safe to allege want of qualification, unless the defendant actually sold the birds, or offered them to sale; in which case, as stat. 28 *G.* 2. *c.* 12. inflicts the penalty, whether the person be qualified or not, it may be proper to omit the whole of what is stated in the conviction respecting qualifications.

s. (S) Warrant to levy 10*l.* on the Goods of an Innkeeper convicted of having Game in his Custody; on Stat. *5 Ann. c.* 14. § 2. *ante*, p. 567.

County of ——— } To the constable of ———.

WHEREAS A. O. *of* ——— *in the parish of* ——— *in the county aforesaid, innkeeper, is on this present* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *duly convicted before me* J. P. *esquire, one of his majesty's justices of the peace in and for the said county, upon the oath of* A. W. *a credible witness, for that he the said* A. O. *on the* ——— *day of* ——— *in the* ——— *year of* ——— *at the parish of* ——— *aforesaid, in the county aforesaid, had in his custody and possession two partridges, he the said* A. O. *being no way qualified by the laws of this realm to have the said two partridges in his custody or possession, against the form of the statute in that case made, by reason whereof he the said* A. O. *hath forfeited the sum of* 10*l.* *These are therefore to require you to levy the said sum of* 10*l.* *by distress of the goods of him the said* A. O.; *and if within the space of* ——— (a) *days next after such distress by you taken, the said sum of* 10*l.* *together with reasonable charges of taking and keeping the said distress shall not be paid, that then you do sell the said goods so by you distrained as aforesaid, and out of the money arising by such sale, that you do pay one half of the said sum of* 10*l.* *to* A. I. *of* ——— *yeoman, who informed me of the said offence, and the other half to the poor of the parish of* ——— *aforesaid, within which parish the said offence was committed; returning to him the said* A. O. *the overplus on demand; the reasonable charges of taking, keeping, and selling the said distress being first deducted; and if sufficient distress cannot be had of the goods of the said* A. O. *that you certify the same to me, together with the return of this warrant. Given under my hand and seal the* [redacted]

A. O. *hath forfeited the sum of* 10*l*. *And whereas on the said* ——— *day of* ——— *in the year aforesaid, I did issue my warrant to the constable of* ——— *to levy the said sum of* 10*l*. *by distress and sale of the goods of him the said* A. O. *and to distribute the same according as is directed by the said statute; and whereas it duly appears to me, as well on the oath of the said constable of* ——— *as otherwise, that he the said constable of* ——— *hath used his best endeavours to levy the said sum on the goods of the said* A. O. *as aforesaid, but that no sufficient distress can be found whereon to levy the same: These are therefore to require you the constable of* ——— *aforesaid to carry the said* A. O. *to the said house of correction at* ——— *aforesaid, and deliver him to the said keeper thereof together with this precept. And you the said keeper are hereby commanded to receive into your custody in the said house of correction him the said* A. O. *and him there safely to keep for the space of three months, without bail or mainprize; and for your so doing this shall be your sufficient warrant. Given under my hand and seal the* ——— *day of* ——— *in the year of our Lord* 18—.

Gaming.

I. *Of Gaming in general, and the statutable Provisions respecting it.*
[33 H. 8. c. 9. — 31 El. c. 5. — 9 Ann. c. 14. — 2 G. 2. c. 28. — 18 G. 2. c. 34. — 25 G. 2. c. 36. — 58 G. 3. c. 70. — 3 G. 4. c. 114.]

II. *Of Wagers.*
[16 C. 2. c. 7. — 9 Ann. c. 14. — 18 G. 2. c. 34.]

III. *Of Lotteries.*
[16 & 11 W. 3. c. 17. — 9 Ann. c. 6. — 10 Ann. c. 26. — 8 G. 1. c. 2. — 9 G. 1. c. 19. — 6 G. 2. c. 35. — 12 G. 2. c. 28. — 13 G. 2. c. 19. — 18 G. 2. c. 34. — 27 G. 3. c. 1. — 34 G. 3. c. 40. — 42 G. 3. c. 119.]

I. Of Gaming in general, and the statutable Provisions respecting it.

Gaming not an offence at common law.

MR. *Dalton* says that playing at cards and dice, and the like, are not prohibited by the common law; neither are they *mala in se* of their own nature, but only prohibited by statute. *Dalt.* c. 46.

Gaming-houses nuisances.

But it is clearly agreed, that all common gaming-houses are nuisances in the eye of the law, being detrimental to the public, as they promote cheating and other corrupt practices; and incite to idleness and avaricious ways of gaining property great numbers whose time might otherwise be employed for the good of the community. 1 *Haw.* c. 25. § 6. 1 *Russ.* 433.

The keeping of a common gaming-house, and for lucre and gain unlawfully causing and procur-

R. v. *Rogier and Humphrey, H.* 3 & 4 *G.* 4. 1 *B.* & *C.* 272. This was an indictment against the defendants, and charged, that they unlawfully did keep and maintain a certain common gaming-house; and in the said common gaming-house, for lucre and gain, unlawfully and wilfully did cause and procure divers idle and evil-disposed persons to frequent and come to play together, at a certain

R. v. Rogier and Humphrey.

ing divers idle and evil-disposed persons to frequent and come to play together at a game called "Rouge et Noir," and permitting the said idle and evil-disposed persons to remain playing at the said game for divers large and excessive sums of money, is an indictable offence at common law. *Semble*, That an indictment would be good merely charging the defendant with keeping a common gaming house. Per *Holroyd* J.

unlawful game at cards, called "*Rouge et Noir;*" and in the said common gaming-house, unlawfully and wilfully did permit and suffer the said idle and evil-disposed persons to be and remain playing and gaming at the said unlawful game, called "*Rouge et Noir,*" for divers large and excessive sums of money, to the great damage and common nuisance of all the liege subjects of our lord the king. Plea, not guilty. A verdict having been found against the defendants — *Curwood* and *Platt* now moved to arrest the judgment. The keeping of a common gaming-house is not an offence at common law: it is not necessarily a nuisance, but may, like a playhouse, become so, if it draw together such numbers of people as to become inconvenient to the places adjacent. In 1 *Hawk. c.* 75. § 6. 7th edit., there is this passage: "Also it has been said, that all common stages for rope-dancers, and also all common gaming-houses, are nuisances in the eye of the law, not only because they are great temptations to idleness, but also because they are apt to draw together great numbers of disorderly persons, which cannot but be very inconvenient to the neighbourhood." This indictment does not show that any inconvenience had accrued to the neighbourhood, by numbers of disorderly persons collected together; and, therefore, it does not come within the reason, in respect of which *Hawkins* states, that it had been said that a gaming-house was a nuisance. At common law gaming is not any offence. In *Bell* v. *The Bishop of Norwich*, (*Dyer*, 254. *b.*) it was held, that it was not sufficient cause for a bishop to refuse to admit a presentee to a living, that he was a haunter of taverns and unlawful games. Besides, the legislature have, by different statutes, 33 *H.* 8. *c.* 9. § 11. and 12., 12 *G.* 2. *c.* 28. § 2. and 3., 13 *G.* 2. *c.* 19. § 9., and 18 *G.* 2. *c.* 34. § 1. and 2., declared certain specified games to be unlawful, and *rouge et noir* is not one of them; and, in several of these statutes, royal palaces, during the residence of the sovereign, are exempted from the operation of the acts. Now, if gaming were an offence at common law, the legislature would not have given such a sanction to the commission

disorderly house, the constable shall go with such inhabitants to a justice of the peace, and shall, upon such inhabitants making oath that they believe the contents of the notice to be true, enter into a recognisance to prosecute such offence, and the constable is to be allowed the expenses of the prosecution, and each of the inhabitants is to receive 10*l.*" And section 8. recites, "that by reason of many subtle and crafty contrivances of persons keeping bawdy-houses, gaming-houses, or other disorderly houses, it is difficult to prove who is the real owner or keeper thereof, by which means many notorious offenders have escaped punishment;" and then enacts, "that any person who shall appear, act, or behave himself as master, or as the person having the care or management of any such house, shall be deemed to be the keeper thereof, and shall be liable to be prosecuted as such, although he be not the real owner." These provisions are a legislative declaration that the keeping of a gaming-house is an indictable offence. Besides, the 9 *Ann. c.* 14. § 2. makes playing at any game unlawful, if more than 10*l.* shall be lost. Now in this case the indictment states, not only that the defendants kept a common gaming-house, but that they permitted persons to play there for divers large and excessive sums of money. The playing for large and excessive sums of money would of itself make any game unlawful; and if so, there can be no doubt that this is an offence at common law. — *Bayley, Holroyd,* and *Best* Js. concurred, and *Holroyd* J. further added, that, in his opinion it would have been sufficient merely to have alleged, that the defendants kept a common gaming-house. — R. R. (*a*)

R. v. Rogier and Humphrey.

By stat. 33 *H.* 8. *c.* 9. § 11. No person shall for his gain, lucre, or living, keep any common house, alley, or place, of bowling, coyting, cloysh, cayls, half-bowl, tennis, dicing-table, carding, or any unlawful game then or thereafter to be invented, on pain of forfeiting 40*s.* a day.

33 H. 8. c. 9. Gaming-houses prohibited by the 33 H. 8.

But it was resolved upon this clause, in the third year of *J.* 1. that if the guests in an inn or tavern call for a pair of dice or tables, if the house be not kept for gaming, lucre, or gain, but they play only for recreation, and for no gain to the owner of the house, this is not within the statute, nor is such person that plays in such house that is not kept for lucre or gain within the penalty of that law. *Dalt. c.* 46.

And moreover, by the same stat., § 12., it is further enacted, that every person using and haunting any of the said houses and plays, and there playing, shall forfeit 6*s.* 8*d.*

Haunting gaming-houses.

§ 14. And all justices of the peace in every shire, mayors, sheriffs, bailiffs, and other head officers in every city, town, and borough, may enter all such houses, places, and alleys, where such games shall be suspected to be holden, exercised, used, or occupied, and as well the keepers of the same, as also the persons there haunting, resorting, and playing, may take, arrest, and imprison, and keep in prison until the keepers and maintainers of the said plays and games have found sureties to the king's use, to be bound

Power of the justices as to the keepers of such houses, and those found there.

(*a*) In *Rex* v. *Dixon,* 10 *Mod.* 336., it was held that the keeping of a gaming-house was an offence at common law as a nuisance. In *Rex* v. *Mason, Leach's C. C.* p. 548. *Grose* J. seemed to be of opinion, that the keeping of a common gaming-house might be described generally. See also 2 *Hawk.* c. 25. § 59.

3 H.8. c.9.

by recognisance or otherwise, no longer to use, keep, or occupy any such house, play, game, alley, or place; and also that the persons there so found be in like case bound by themselves, or with sureties, no more to play, haunt, or exercise from thenceforth, in, at, or to any of the said places, or at any of the said games.

And of officers n cities and owns.

§ 15. And the mayors, sheriffs, bailiffs, constables, and other head officers, within every city, borough, or town, shall make due search weekly, or at the furthest once a month, in all places where any such houses, alleys, plays, or places shall be suspected to be had, kept, and maintained; and if they shall not make such search at the furthest once a month, if the case so require, every such person offending shall forfeit 40*s.* for each month.

Artificers and servants.

§ 16. By the same act no manner of artificer, or craftsman of any handicraft or occupation, husbandman, apprentice, labourer, servant at husbandry, journeyman, or servant of artificer, mariners, fishermen, watermen, or any serving man, shall play at the tables, tennis, dice, cards, bowls, clash, coyting, logating, or any other unlawful game, out of *Christmas*, on pain of 20*s.* for every time; and in *Christmas* to play at the said games in their masters' houses, or in their masters' presence; and also no person shall at any time play at bowl or bowls in open places out of his garden or orchard, on pain of 6*s.* 8*d.* for every time of offending. See *R.* v. *Clarke*, 1 *Cowp.* 35.

Masters may license such.

§ 22. But any master may license his servant to play at cards, dice, or tables, with himself, or with any other gentleman repairing to his said master openly in his house or in his presence.

Also certain persons may.

§ 23. And any nobleman or other person having manors, lands, tenements, or other yearly profits for life, in his own or his wife's right, of 100*l.* a year, may command or license his servants, or family of his house, to play within the precinct of his house, garden, or orchard, at cards, dice, tables, bowls, or tennis, as well among themselves as others repairing to the same house.

Punishing of [redacted] § 16. And all justices of peace, mayors, bailiffs, sheriffs, and

[redacted]

But by stat. 31 *El. c. 5.* § 7. All suits to be pursued upon any statute (that is, any statute then in force) for using any unlawful game shall be sued and prosecuted, or otherwise heard and determined, in the general quarter sessions or assizes of the county where the offence shall be committed, or in the leet within which it shall happen, and not in any wise out of the county. 31 El. c. 5. How to be recovered.

And by stat. 18 *G. 2. c. 34.* § 7. No privilege of parliament shall be allowed to any person, against whom a prosecution shall be commenced, for keeping any public or common gaming-house, or any house, room, or place for playing at any before or now prohibited game. 18 G. 2. c. 34. No privilege of parliament.

By stat. 25 *G. 2. c. 36.* § 2. Any house, room, garden, or other place kept for public dancing, music, or other public entertainment of the like kind in *London* and *Westminster*, or within 20 miles thereof, without licence from the last preceding *Michaelmas* quarter sessions, under the hands and seals of four or more justices there assembled (except the theatres of *Drury-lane*, *Covent-garden*, and *Hay-market*, and other entertainments exercised by letters patent or licence of the crown, or of the lord chamberlain, § 4.) shall be deemed a disorderly house or place; and the keeper thereof shall forfeit 100*l.* with full costs to him who shall sue (in six months) in any of the courts at *Westminster*, and be otherwise punishable as in cases of disorderly houses. And the person who shall appear to act as master, or as having the management of such gaming-house or other disorderly house, shall be deemed a keeper thereof, and liable as such. And it shall be lawful for any constable, or other person being authorised by warrant under the hand and seal of one justice, to enter such house or place, and to seize every person found therein, that they may be dealt with according to law. 25 G. 2. c. 36. Houses of public amusement within London and 20 miles thereof to be licensed. The person acting as master to be deemed the keeper.

§ 3. Which said licence shall be granted at the last preceding *Michaelmas* sessions, and shall be signed and sealed by four justices in open court, and afterwards be publicly read by the clerk of the peace, with the names of the justices subscribing the same; and no such licence shall be granted at any adjourned sessions; nor shall any fee be taken for the same. And there shall be affixed and kept up in some notorious place, in large capital letters over the door or entrance of every such licensed house or place, *Licensed pursuant to act of parliament of the twenty-fifth of King* George *the second;* and it shall not be opened for such purposes before five in the afternoon. And the affixing and keeping up such inscription, and the said limitation in point of time, shall be inserted in and made conditions of such licence; and in case of a breach of either of the said conditions, the licence shall be forfeited, and revoked by the justices at the next sessions, and shall not be renewed; nor shall any new licence be granted. Licence.

§ 5. "And in order to encourage prosecutions against persons keeping bawdy-houses, gaming-houses, or other disorderly houses," it is enacted, "that if any two inhabitants of any parish or place paying scot and bearing lot therein, do give notice in writing to any constable (or other peace-officer of the like nature, where there is no constable) of such parish or place, of any person keeping a bawdy-house, gaming-house, or any other disorderly house, in such parish or place, the constable or such officer as aforesaid, so receiving such notice, shall forthwith go with such inhabitants to Constable's duty upon notice of gaming-houses, &c.

25 G. 2. c. 36.

one of H. M.'s justices of the peace of the county, city, riding, division, or liberty in which such parish or place does lie; and shall, upon such inhabitants making oath before such justice, that they do believe the contents of such notice to be true, and entering into a recognisance in the penal sum of 20*l.* each, to give or produce material evidence against such person for such offence, enter into a recognisance in the penal sum of 30*l.* to prosecute with effect such person for such offence at the next general or quarter session of the peace, or at the next assizes to be holden for the county in which such parish or place does lie, as to the said justice shall seem meet; and such constable or other officer shall be allowed all the reasonable expenses of such prosecution, to be ascertained by any two justices of the peace (F) of the county, city, riding, division, or liberty where the offence shall have been committed, and shall be paid the same by the overseers of the poor of such parish or place; and in case such person shall be convicted of such offence, the overseers of the poor of such parish or place shall forthwith pay the sum of 10*l.* to each of such inhabitants; and in case such overseers shall neglect or refuse to pay to such constable or other officer such expenses of the prosecution as aforesaid, or shall neglect or refuse to pay upon demand the said sums of 10*l.* and 10*l.*, such overseers, and each of them, shall forfeit to the person entitled to the same, double the sum so refused or neglected to be paid."

Recognisance.

Charges of prosecution.

Reward.

Penalty.

§ 6. Provided "that upon such constable or other officer entering into such recognisance to prosecute as aforesaid, the said justice of the peace shall forthwith make out his warrant, to bring the person so accused of keeping a bawdy-house, gaming-house, or other disorderly house, before him, and shall bind him or her over to appear at such general or quarter session or assizes, there to answer to such bill of indictment as shall be found against him or her for such offence; and such justice shall and may, if in his discretion he thinks fit, likewise demand and take security for such person's good behaviour in the mean time, and until such indict-

Person keeping bawdy-houses, &c. to be bound over.

notice, or shall attend, and shall decline or refuse to enter into such recognisance to prosecute, then such constable shall enter into the same, and shall prosecute, and shall be entitled to his expenses, to be allowed as in and by the said act is directed. 58 G. 3. c. 70.

By stat. 25 *G.* 2. *c.* 36. § 7. if the constable shall neglect or refuse, upon such notice, to go before a justice, or to enter into recognisance, or shall be wilfully negligent in carrying on the prosecution, he shall forfeit 20*l.* to each of the said inhabitants. 25 G. 2. c. 36. Penalty.

§ 8. The person appearing or acting as master, or as having the care and management of any gaming-house, shall be taken to be the keeper thereof, and liable as such. Who shall be deemed master.

§ 9. And on trial, any person may give evidence against the defendant, notwithstanding his being a parishioner, or having entered into such recognisance. Parishioner may give evidence.

§ 10. And no indictment for such offence shall be removed by *certiorari.*

By stat. 9 *Ann. c.* 14. § 2. Any person who shall *at any time or sitting*, by playing at cards, dice, tables, or *other game or games whatsoever*, or by betting on the sides of such as do play, *lose* to any one or more persons so playing or betting in the whole the sum or value of 10*l.*, and shall pay or deliver the same, or any part thereof; the person so losing and paying or delivering the same shall be at liberty in three months then next to sue for and recover the same with costs in any court of record; and if he shall not *bonâ fide* sue in three months, it shall be lawful for any person to sue for and recover the same and treble value, with costs; half to such person who shall sue, and half to the poor. 9 Ann. c. 14. Losing 10*l.* or upwards at a time.

By stats. 9 *Ann. c.* 14. § 3. and 18 *G.* 2. *c.* 34. § 3. Every person who shall be so liable to be sued for the same shall be obliged and compellable to answer on oath such bill as shall be preferred against him, for discovering the sum of money or other thing so won at play. 9 Ann. c. 14. 18 G. 2. c. 34.

This is a remedial act; and there is a clear distinction between remedial and penal acts, that in the former, a debt is due to the party grieved before the commencement of the action; but not in the latter. The stat. of Ann. is a remedial act.

The assignees of a bankrupt may recover from the winner money lost at play by the bankrupt before his bankruptcy, in an action of debt on the statute 9 *Ann. c.* 14.; the meaning of the act being that the money lost and paid to the winner is part of the property of the loser. *Brandon* v. *Pate*, 2 *H. Blac.* 308. *See also* 2 *Ves. jun.* 514.

By stat. 9 *Ann. c.* 14. § 5. If any person shall by any fraud, circumvention, deceit, or unlawful device or ill practice in playing at or with cards, dice, or any of the games (in this act aforesaid), or by bearing a part in the stakes, wagers, or adventures, or by betting on the sides of such as do play, win, obtain, or acquire to himself or any other any sum of money or other valuable thing whatsoever, or shall at any one time or sitting, win of any one or more person or persons whatsoever above the sum of 10*l.*, and being convicted upon an indictment or information, he shall forfeit five times the value of the money or thing so won; and in case of such ill practice shall be deemed infamous, and suffer corporal punishment as in cases of wilful perjury. The penalty to be recovered by those *who will sue.* 9 Ann. c. 14. Fraudulent winning.

Ann. c. 14.

stices may ll before them spected gam- ers.

By § 6. Any two justices may cause to come before them any person whom they shall have just cause to suspect to have no visible estate, profession, or calling to maintain themselves by, but do for the most part support themselves by gaming; and if such persons shall not make it appear that the principal part of his expenses is not maintained by gaming, they shall require of him sufficient securities for his good behaviour for 12 months, and in default thereof shall commit him to the common gaol, there to remain till he find such securities.

At any time or sitting.] *Bones* v. *Booth*, 2 *Blac. Rep.* 1226. Two persons played at cards from *Monday evening* to *Tuesday evening* without any interruption, except for an hour or two at dinner, and one of them won a balance of seventeen guineas; this was held to be won at one sitting within the statute. — *Per Blackstone* J. To lose 10*l.* at one *time* is to lose it by a single stake or bet; to lose at one *sitting* is to lose it in a course of play where the company never parts, though the person may not be actually gaming the whole time. — *Nares* J. The statute is *remedial* where the action is brought by the party injured, but *penal* where brought by a common informer.

What is a losing t one time, and hat a losing at ne sitting.

8 G. 2. c. 34. Gaming- ouses.

By 18 *G.* 2. *c.* 34. § 1. No person shall keep any house, room, or place for playing, or permit any person within any such house, &c. to play at the game of roulet (or roly-poly), or at any other game with cards or dice, already prohibited by law; and if any person shall keep such house, &c. for playing, or permit any person to play as aforesaid, he shall incur the penalties of stat. 12 *G.* 2. *c.* 28.

3 G. 4. c. 114.

By stat. 3 *G.* 4. *c.* 114. Persons convicted of keeping a common gaming-house may be sentenced to imprisonment, with hard labour, for any term not exceeding that for which such court may now imprison for such offence, either in addition to, or in lieu of any other punishment which may be inflicted on any such offenders by any law in force before the passing of this act,



betting, at any one time, the sum or value of 10*l.*, or within 24 hours the sum or value of 20*l.*, he shall be liable to be indicted for such offence within six months after it is committed, before the justices of the king's bench, assize, gaol-delivery, or grand sessions; and on conviction shall be fined five times the value of the sum so won or lost; which fine (after charges as the court shall adjudge reasonable are allowed to the prosecutors and evidence) shall go to the poor where the offence was committed. See 1 *Russ.* 595. 18 G. 2. c. 34. Persons winning or losing certain sums liable to be indicted, &c.

By § 10. This act is not to invalidate stat. 9 *Ann. c.* 14.

Gaming in public-houses. See stat. 9 *G.* 4. *c.* 61. § 21. Vol. I. p. 54.

II. Of Wagers.

Or other game whatsoever.] It has been holden that laying above 10*l.* on a *horse-race* is an illegal bet within the statute of *Anne*, on the ground that the statute ought to be extended to all *sports* as well as games, in order to prevent excessive betting. *Goodburn* v. *Marley*, 2 *Str.* 1159. *Blaxton* v. *Pye*, 2 *Wils.* 309. 9 Ann. c. 14. Horse-racing is within the stat.

And in *Lynall* v. *Longbotham*, 2 *Wils.* 36., the court of C. P. were of opinion, that a *foot-race*, whether the race be upon a given distance, or against a certain time, is a game prohibited by 9 *Ann. c.* 14. And also foot-racing.

And a wager that a person did not find, within such a time, a man who should carry on foot 24 stone weight, ten miles in fifteen hours, has been holden to be within the same principle. *Brown* v. *Beckley*, 1 *Cowp.* 282.

It has been determined, that a wager of 10*l.* to 5*l.* upon a horse-race, is within this statute; although the race was for a legal plate. *Clayton* v. *Jennings*, 2 *Blac. Rep.* 706.

In *Jeffreys* v. *Walter*, 1 *Wils.* 220. The court inclined to think, that cricket was a game within the meaning of stat. 9 *Ann. c.* 14. Cricket.

As to losing by betting, see 18 *G.* 2. *c.* 34., and 9 *Ann. c.* 14. *ante*, 629.

By stat. 16 *C.* 2. *c.* 7. § 3. If any person shall play at cards, dice, tables, tennis, bowls, skittles, shovelboard, or any other pastime or game whatsoever, (other than for ready money,) or bet on the sides of such as shall play, and shall lose any sum or other thing, exceeding 100*l.*, at any one time or meeting, upon ticket, or credit, or otherwise, and shall not pay down the same at the time when he shall lose the same, in such case he shall not be bound to make it good, but the contract for the same, and for every part thereof, and all assurances and securities for the same shall be void; and the winner shall forfeit treble value of all such sums as he shall so win above 100*l.*, half to the king, and half to him that shall sue in one year in any of the courts of record at *Westminster*, with treble costs. 16 C. 2. c. 7. Losing above 100*l.* at a time.

In the case of *Humphries* v. *Rigby*, 2 *Eq. Ab.* 184., a bill was brought, to be relieved against a bond for money won at all-fours. The plaintiff was a distiller, and the defendant a tapster at a bowling-green. And it appearing that the defendant laid the cards, and turned up the knave of clubs, which was jack, several Relief may be had in equity.

times together, and it being an unreasonable sum for such persons to venture; the plaintiff was relieved, and the bond ordered to be delivered up, although this case was not within the statute, the bond being for less than 100*l.*: for equity always relieved, before the statute, where any fraud appeared.

9 Ann. c. 14. Securities to be void.

By 9 *Ann. c.* 14. § 1. All notes, bills, bonds, judgments, mortgages, or other securities, where the whole or any part of the consideration shall be for money or any other valuable thing won by playing at cards, dice, tables, tennis, bowls, or other game whatsoever, or by betting on the sides of such as do game, or for the reimbursing or repaying any money knowingly lent or advanced at the time and place of such play to any person so gaming or betting, or that shall (during such play) so play or bet, — shall be void; and where such securities shall be of lands, or such as encumber or affect the same, they shall enure and be to the sole use and benefit of, and devolve upon such person as might have such lands, in case the said grantor, or person so encumbering the same, had been dead; and all conveyances to hinder them from devolving on such person shall be void.

In *Bowyer* v. *Bampton*, 2 *Str.* 1155., it was holden that an innocent indorsee for a valuable consideration, without notice, could not maintain an action on a promissory note given for money knowingly lent to game with at dice.

The statute only avoids securities for money won or lost at play, and does not extend to cases of mere *loans*, without any security taken. *Barjeau* v. *Walmsley*, 2 *Str.* 1249.

In an action against the drawer of a bill payable at a particular place, it is no defence that no notice of the dishonour has been given

Edwards v. *Dick*, *H.* 1 & 2 *G.* 4. 4 *B.* & *A.* 212. Assumpsit by plaintiff, as indorsee, against the defendant as drawer and indorser of a bill of exchange. The bill was dated *December* 1st, 1819, and was drawn by defendant upon, and accepted by, Lord *R.*, for the sum of 240*l.*, payable at three months, at Mr. *Newland*'s chambers, *New Inn*. Plea, general issue. At the trial before *Bayley* J., it appeared that the bill had been duly presented and dishonoured, but no notice had been given to the

event, may have an influence on the public policy of the kingdom. 2 *Selw. N. P.* 1302.

In *Gilbert* v. *Sykes, Bart.*, 16 *East*, 150., the defendant, in the year 1802, in consideration of one hundred guineas, agreed to pay the plaintiff a guinea a day during the life of *Buonaparte*. The defendant paid a guinea a day for some years; but then desisted. The action was brought to recover the arrears. The jury having found a verdict for defendant; on motion for a new trial, it was contended in support of the verdict, that the wager was illegal, inasmuch as it had a tendency to create an interest in the plaintiff in the life of a foreign enemy, and which, in the case of invasion, might induce him to act contrary to his allegiance. The court being of opinion that the justice of the case had been satisfied, refused to disturb the verdict; and Lord *Ellenborough* C. J. expressed a strong opinion against the legality of the wager, as well on the ground before mentioned, as also on the ground, that the party suffering under such a contract might be induced to compass and encourage the horrid practice of assassination, in order to get rid of a life so burthensome to him.

An action cannot be maintained upon a wager on a cock-fight, because it is a barbarous diversion, which ought not to be encouraged or sanctioned in a court of justice; and further, because it would tend to the degradation of the court to entertain such enquiries: nor where the discussion on the subject of the wager will be attended with injury to a third person, and lead to indecent evidence. *Squires* v. *Whitaker*, 3 *Campb.* 140. 2 *Selw. N. P.* 1304.

On this principle, a wager between two indifferent persons on the sex of the *Chevalier D'Eon*, who had appeared to the world as a man, and acted in that character in a variety of capacities, was holden illegal. *Dacosta* v. *Jones*, 2 *Cowp.* 729.

In a late case, *Gibbs* C. J. refused to try an action upon a wager whether an unmarried woman had had a child. *Ditchburn* v. *Goldsmith*, 4 *Campb.* 152. See *also Brown* v. *Leeson*, 2 *H. Blac.* 43. *Henkin* v. *Gerss*, 2 *Campb.* 408.

9 Ann. c. 14. Persons suspected of supporting themselves by gaming.

By stat. 9 *Ann. c.* 14. § 6. Any two justices may cause to come or to be brought before them every person whom they shall have just cause to suspect to have no visible estate, profession, or calling, to maintain themselves by, but do for the most part support themselves by gaming; and if such person shall not make it appear to the said justices that the principal part of his expenses is not maintained by gaming, they shall require of him sufficient sureties for his good behaviour for twelve months, and in default of his finding such securities shall commit him to the common gaol until he shall find such securities as aforesaid.

§ 7. And if he shall, during the time for which he shall be bound, at any one time or sitting, play or bet for any sums or other thing exceeding in the whole the value of 20*s.*, such playing shall be deemed a forfeiture of the recognisance.

16 C. 2. c. 7. Cheating.

By stat. 16 *C.* 2. *c.* 7. § 2. If any person shall by any fraud, unlawful device or other ill practice in playing at cards, dice, tables, tennis, bowls, skittles, shovelboard, or by cock-fightings, horse-races, dog-matches, foot-races, or other pastimes or games; or by bearing a share in the stakes; or by betting on the sides of such as shall play, act, ride, or run as aforesaid, — win any sum or other valuable thing; he shall forfeit treble the value, half to the

16 C. 2. c. 7. king, and half to the party grieved, (if he shall sue in six months,) otherwise to any person who shall sue in one year next after the said six months, in any of the courts of record at *Westminster*, with treble costs.

9 Ann. c. 14. And by stat 9 *Ann. c.* 14. § 5. If any person shall by any fraud or shift, cosenage, circumvention, deceit, or unlawful device, or ill practice whatsoever, in playing at cards, dice, tables, tennis, bowls, or any the games aforesaid, or bearing a share in the stakes, or betting on the sides of such as do play, win any sum of money or other valuable thing, or shall at any one sitting, win of one or more persons above the value of 10*l.*, and shall be convicted thereof upon indictment or information; he shall forfeit five times the value of such money or other thing so won, and shall be deemed infamous, and suffer such corporal punishment as in cases of wilful perjury; and such penalty shall be recovered by such person as shall sue for the same, by such action as aforesaid.

The loser is a good witness to prove the loss. *R.* v. *Luckup*, *M.* 9 *G.* 2. *B. R. cited Will.* 425. (*n. c.*)

R. v. *Luckup*, 2 *Str.* 1048. The defendant was convicted on an information upon this act. And it was moved that a fine should be set upon the defendant, if he refused to speak with the prosecutor. — But by the Court: All the judgment that we can give is, *that he is convicted;* and a new action must be brought upon that judgment for the forfeiture. And the defendant was discharged, without any fine or costs.

It was held by Lord *Ellenborough* C. J. that upon an indictment on this statute for winning more than 10*l.* at one sitting, the defendant may be convicted of winning a less sum than that stated in the indictment. *R.* v. *Hill, Darley, and others*, 1 *Stark. N. P.* 359.

Quarrelling. And by stat. 9 *Ann. c.* 14. § 8. For the preventing such quarrels as may happen on the account of gaming, if any person shall assault and beat, or challenge, or provoke to fight, any other person

[redacted]

every person who shall so exercise, expose, open, or show to be played, drawn, or thrown at any such lottery, play, or device, shall forfeit 500*l.*, one third to the king, one third to the poor, and one third with double costs to him that shall inform and sue in the courts at *Westminster;* and the offenders shall likewise be prosecuted as common rogues, according to the statutes in that case made and provided. 10&11 W.3.c.17

§ 3. And every person who shall play, throw, or draw at any such lottery, play, or device, shall forfeit 20*l.*, to be recovered in like manner.

By stat. 9 *Ann. c.* 6. § 56. All justices of the peace, mayors, bailiffs, head officers, constables, and other civil officers, shall use their utmost endeavours to prevent the drawing of any such unlawful lottery, by all lawful ways and means; and every person who shall set up, or shall by writing or printing publish the setting up any such unlawful lottery, with intent to have such lottery drawn, shall forfeit 100*l.*; one third to the king, one third to the poor, and one third with full costs to him who shall sue in the courts at *Westminster.* 9 Ann. c.6. Power of the justices.

By stat. 10 *Ann. c.* 26. § 109. Every person, who shall keep any office or place for making insurances on marriages, births, christenings, or service, or any other office or place under the denominations of sales of gloves, of fans, of cards, of numbers, of the queen's picture, for the improvement of small sums of money, or the like offices or place, shall forfeit 500*l.*; one third to the king, one third to the poor, and one third with full costs to him who shall inform or sue. And every printer, or other person, who shall by writing or printing publish the setting up or keeping any such office or place for such purpose, shall forfeit 100*l.*, to be recovered and distributed in like manner. 10 Ann. c.26. Insurances. Penalty.

By stat. 8 *G.* 1. *c.* 2. § 36, 37. Every person who shall keep any office or place, under the denomination of sales of houses, lands, advowsons, presentations to livings, plate, jewels, ships, goods, or other things for the improvement of small sums of money; or shall sell or expose to sale the same or any of them, by way of lottery, or by lots, tickets, numbers, or figures; or shall make, print, advertise, or publish proposals or schemes for advancing small sums of money by several persons, amounting in the whole to large sums, to be divided among them by the chances of the prizes in some public lottery; or shall deliver out tickets to the persons advancing such sums to entitle them to a share of the money so advanced, according to any proposal or schemes; or shall make, print, or publish any proposal or scheme of the like nature, under any denomination whatsoever ——— and shall be thereof convicted on oath of one witness by two justices where the offence shall be committed, or the offender shall be found, he shall, over and above any penalties by any former act made against private lotteries, forfeit 500*l.*, one third to the king, one third to the informer, and one third to the poor, to be levied by distress and sale by warrant of such justices; and shall also by such justices be committed to the county gaol without bail for one whole year, and from thence till the said sum of 500*l.* shall be paid: Provided that persons aggrieved may appeal to the next quarter sessions. And every person who shall be adventurer in, or any way contribute unto, or on the account of any such sales, 8 G.1. c.2. Sales of lands or goods; and chances in public lotteries.

8 G.1. c.2. lotteries, proposals, or schemes, shall forfeit double the sum contributed, with costs, half to the king, and half to him who shall sue in the courts at *Westminster*.

12 G.2. c.28. By stat. 12 *G.* 2. *c.* 28. § 1. If any person shall erect, set up, continue, or keep any office or place, under the denomination of a sale of houses, lands, advowsons, presentations to livings, plate, jewels, ships, goods, or other things by way of lottery, or by lots, tickets, numbers, or figures, cards or dice; or shall make, print, advertise, or publish, or cause to be made, &c. proposals or schemes for advancing small sums by several persons, amounting in the whole to large sums, to be divided among them by chances of the prizes in some public lottery established by act of parliament, or shall deliver out tickets, or cause or procure to be delivered out to persons advancing such sums, to entitle them to a share of the money so advanced, according to such proposals or schemes; or

Exposing to sale lands, jewels, &c. by any game. shall expose to sale any houses, lands, advowsons, presentations to livings, plate, jewels, ships, or other goods, by any game, method, or device whatsoever, depending upon, or to be determined by, any lot or drawing, whether it be out of a box or wheel, or by cards or dice, or by any machine, engine, or device of chance of any kind whatsoever, shall, on conviction by one justice, on

Penalty how to be levied. oath of one witness or on view of such justice, forfeit 200*l*., to be levied by distress and sale; which forfeiture, after deducting reasonable charges of the prosecution, shall be one third to the informer, and two thirds to the poor of the parish: but where the person convicted shall be in the city of *Bath*, then the two thirds shall go to the use of the poor residing within the hospital or infirmary erected for the benefit of poor persons resorting to the said city for the benefit of the mineral waters, after deducting the charges of conviction as aforesaid. See also 42 *G.* 3. *c.* 119. § 5. *post*.

And by § 2. The games of the ace of hearts, pharaoh, basset, and hazard, are declared to be games and lotteries by cards or dice



as aforesaid (except as excepted), shall severally forfeit as in stat. 12 G
12 *G.* 2. *c.* 28.

Moreover, by stat. 12 *G.* 2. *c.* 28. § 4. Every such sale of houses, 12 G
lands, advowsons, presentations, plate, jewels, ships, goods, or other things, by any game, lottery, machine, engine or other device, depending upon any chance or lot, shall be void; and the same being exposed to sale in manner aforesaid, shall be forfeited to such persons as shall sue for the same in any court of record, or at the assizes.

And by stat. 18 *G.* 2. *c.* 34. No person shall keep any house or 18 G.
place for playing, or permit any person within such house to play, Keep
at any prohibited game, with cards or dice, under the penalties of ing-h
12 *G.* 2. *c.* 28. § 1. (See 18 *G.* 2. *c.* 34. *ante*, p. 630.)

§ 1. 8. In case such offender have not sufficient goods and Pow
chattels whereon to levy the said penalties, or do not immediately justic
pay or secure the same, he may be committed to the common gaol for any time not exceeding six months.

By § 5. Persons aggrieved may appeal to the next sessions, App
giving reasonable notice to the prosecutor, and entering into recognisance before some (*a*) justices with two sureties to try such appeal at such sessions, and the matter shall be then finally heard and determined, and not afterwards; and in case such conviction or judgment be affirmed, the appellant shall pay treble costs; to be recovered as costs of suit may by any defendant in any other cases by law.

R. v. *The Justices of Surrey.* *H.* 2 & 3 *G.* 4. — 5 *B.* & *A.* 539. Whe
R. N. for a mandamus to the justices of *Surrey* to enter continuances and hear the appeal of *Andrew Barnet* against a conviction for gaming under stat. 12 *G.* 2. *c.* 28. The defendant was convicted on the 6th of *November*, 1821, and entered into recognisances to appeal against it to the next quarter sessions. It was sworn on the one side, and denied by the other, that at the time of entering into recognisances his attorney gave a verbal notice to the informer of his intention to appeal. The defendant attended in order to prosecute his appeal at the *January* sessions, 1822, when there having been no notice of appeal in writing, the court refused to hear the appeal. The fifth section of the act giving the appeal states, that "persons aggrieved may appeal, giving reasonable notice to the prosecutor, and entering into recognisances," &c. It was contended, that the sessions were to judge what was a reasonable notice of appeal, and they were of opinion that it must be a notice in writing. *Sed per Abbott* C. J. Wh
"We are of opinion, that *where a statute requires reasonable notice to be given, it does not necessarily mean that the notice should be in writing, but only that as to time or number of days it should be reasonable.* Here, however, as the fact is disputed, we shall only grant a mandamus to the justices, commanding them to examine whether reasonable verbal notice has been given, and in that case to enter continuances and hear the appeal. Rule accordingly." See Vol. I. tit. *Appeal.*

By stat. 12 *G.* 2. *c.* 28. § 6. And no such conviction or judgment Cert
shall be set aside for want of form in case the facts be proved, nor

(*a*) The act says justices, but probably it meant justice.

12 G.2. c.28. be removable by *certiorari*, until judgment and determination be given and made at such sessions.

18 G.2. c.34. Witnesses. And by stat. 18 *G.* 2. *c.* 34. § 4, 5. Any person may be summoned as a witness (other than the party accused), notwithstanding his having played, betted, or staked at any prohibited game; and in case he neglect to appear, or refuse to give evidence, he shall forfeit 50*l.*, to be levied by distress by warrant of the justice issuing such summons; and for want of sufficient distress, he shall be committed to gaol for six months. *Vide ante*, p. 630.

46 G.3. c.148. Stat. 46 *G.* 3. *c.* 148. § 59. Enacts, that all pecuniary penalties for any offence against any law touching or concerning lotteries, shall be applied to the use of H. M., and it shall not be lawful for any person to commence, &c. any action or information, for the recovery of any pecuniary penalty inflicted by any of the laws touching or concerning lotteries, unless the same be commenced and prosecuted, in the name of H. M.'s attorney-general in the court of exchequer at *Westminster*, if such offence be committed in *England*, or in the name of H. M.'s attorney-general in the court of exchequer at *Dublin*, if such offence shall be committed in *Ireland*, or in the name of H. M.'s advocate-general in the court of exchequer in *Scotland*, if such offence shall be committed in *Scotland*; and all proceedings otherwise are declared to be void.

And by § 64. Stat. 27 *G.* 3. *c.* 1. is repealed.

"*Touching and concerning Lotteries.*" — Quære, Whether the above statute extends to any other than *State Lotteries*? In *R.* v. *Liston*, *5 T. R.* 388., it was decided, that stat. 27 *G.* 3. *c.* 1. which contained a provision somewhat similar to stat. 46 *G.* 3. *c.* 148. § 59., did not repeal the power over games of chance or lotteries prohibited by stat. 12 *G.* 2. *c.* 28.

Ensuring in the lottery is not gaming within stat. 5 *G.* 2. *c.* 30. § 12. which will prevent a bankrupt's certificate being allowed. 1 *H. Blac.* 29.

42 G.3. c.119. Little goes. By stat. 42 *G.* 3. *c.* 119. § 1. All games or lotteries called *Little Goes*, are declared common and public nuisances and against

42 G.3. c.119.

§ 3. Every person offending against this act in manner hereinbefore mentioned against whom no information shall have been made as aforesaid, shall be deemed a rogue and vagabond, within the true intent and meaning of stat. 17 *G.* 2. *c.* 5.; and also of stat. 27 *G.* 3. *c.* 1. (*a*); and shall be punishable according to the said acts and this act.

Persons so offending, against whom no such information shall have been made, shall be punished as rogues and vagabonds.

§ 4. Upon complaint or information made upon oath before any justices of the peace, of any offence committed against this act in any house or place within the jurisdiction of any such justice, whereby any of the offenders may be liable to punishment as rogues and vagabonds, it shall be lawful for the said justice, if he shall judge it reasonable, by special warrant under his hand and seal, to authorise and empower any person or persons, by day or by night, (but if in the night-time, then in the presence of a constable or other lawful officer of the peace, who are hereby required to be aiding or assisting therein,) to break open the doors or any part of such house or place where such offence shall have been committed, and to enter into such house or place, and to seize and apprehend all such offenders, and all other persons who shall be discovered in such house or place, and who shall have knowingly aided or assisted, or been anyways concerned with any such offender or offenders in committing such offence, and to convey them before any justice or justices of the peace of the county, riding, division, city, liberty, or place wherein such persons shall be so apprehended, to be dealt with according to law as aforesaid; and all persons who shall be discovered in such house or place knowingly aiding, assisting, or any ways concerned with such offender or offenders in the carrying on any transactions respecting the said little goes or lotteries, or either of them, shall be deemed rogues and vagabonds, and punishable in like manner as is directed by the said recited act of the 17 *G.* 2. *c.* 5. (*b*); and it shall be lawful for the officer or officers having the execution of such warrant, and all other persons acting in his or their aid or assistance, to stop, arrest, and detain all and every the person and persons so discovered in such house or place, and to convey the said person and persons before such justice of the peace as aforesaid; and if any person shall forcibly obstruct, oppose, molest, or hinder any such officer, or others acting in his or their aid or assistance, in the due execution of their duty, or in the due entering into such house or place, or in the seizing, detaining, or conveying before such justice any such offenders, or other persons as aforesaid, every such person so obstructing, opposing, molesting, or hindering as aforesaid, shall be deemed an offender against law and the public peace, and the court before whom any such offender shall be tried and convicted shall and may order such offender to be fined, imprisoned, and publicly whipped, as in their discretion shall be thought fit; and all persons, although not discovered in such house or place as aforesaid, who shall employ or cause to be employed any person or persons in carrying on any of the transactions aforesaid, or in aiding or assisting any such person or persons, shall be deemed rogues and vagabonds, and shall be punishable in like manner as is directed by stat. 27 *G.* 3. *c.* 1. (*c*)

Justices on information may authorise persons to break open the doors of places where such offences shall have been committed, and apprehend offenders and others assisting them, and carry them before a justice.

Penalty for obstructing persons in the execution of their duty.

Persons employing others, though not discovered in the premises, to be deemed rogues and vagabonds.

(*a*) See note, p. 638.
(*b*) Repealed by stat. 5 *G.* 4. *c.* 83. See tit. Vagrant.
(*c*) N. B. This act is repealed by the 46 *G.* 3. *c.* 148. § 64.

42 G.3. c.119.

Persons agreeing to pay any sum, or to deliver any goods, &c. on any event relative to such game or lottery, or publishing any proposal, shall forfeit 100*l.*

§ 5. "No person or persons whatever shall, on or under any pretence, device, form, denomination, or description whatsoever, promise or agree to pay any sum or sums, or to deliver any goods, or to do or forbear doing any thing for the benefit of any person or persons, whether with or without consideration, on any event or contingency relative or applicable to the drawing of any ticket or tickets, lot or lots, numbers or figures, in any such game or lottery, or to publish any proposal for any of the purposes aforesaid; and if any person or persons shall offend in any of the matters aforesaid, he, she, or they shall, for every offence, forfeit and pay the sum of 100*l.*"

Offenders may be apprehended on the spot by any person, and carried before a justice, who shall, on the penalty not being paid, commit the offender.

§ 6. It shall be lawful for any person whatever to apprehend, on the spot, any person or persons so offending, and to convey or cause to be conveyed before any justice of the peace residing near the place where such offence shall be committed, the person or persons so apprehended, to be proceeded against under this act; and when any person or persons shall be apprehended or brought before any justice for any such offence, it shall be lawful for such justice to proceed to examine into the circumstances of the case, and upon due proof upon oath or solemn affirmation of any such offence committed against this act, to give judgment or sentence accordingly; and where the party accused shall be convicted of such offence, and such penalty shall not be immediately paid, to commit such offender to prison for any space of time not exceeding six calendar months, nor less than one calendar month, without bail or mainprize, and without appeal, or until such penalty shall be satisfied; and every such penalty, when paid upon conviction, shall go and be applied, one third thereof to H. M., one third thereof to the use of the informer or informers, and the other third to the person or persons apprehending or securing such offender or offenders.

Application of the penalty.

§ 7. All provisions, powers, authorities, &c. &c. contained in stat. 27 *G.* 3. *c.* 1. shall extend to all the provisions of this act.

General issue.

§ 8. Any sheriff's officer or other person sued or prosecuted for

aggrieved may appeal to the next quarter sessions; whose judgment shall be final. 9 G. 1. c. 19.

And by stat. 6 *G.* 2. *c.* 35. § 29, 30. If any person shall sell, procure, or deliver any ticket, receipt, chance, or number, or division in any foreign or pretended foreign lottery, or in any class, part, or division thereof, or in any undertaking in the nature of a lottery, or shall sell, procure, or deliver any ticket, receipt, chance, or number in any duplicate or pretended duplicate of any foreign or pretended foreign lottery; or shall receive or cause to be received any money for any such ticket, receipt, chance, or number, or in consideration of any money to be paid in case any ticket or number in any foreign or pretended foreign lottery, or any class, part, or division thereof, shall prove fortunate; and shall be convicted thereof in the courts at *Westminster*, or on the oath or affirmation of one witness before two justices where the offence shall be committed, or the offender shall be found; he shall forfeit 200*l.*, one third to the king, one third to the informer, and one third to the poor where the offence shall be committed; the same (in case of conviction before two justices) to be levied by distress and sale by warrant of such justices; and shall also be committed to the county gaol for one year, and from thence till the 200*l.* be paid: Provided, that persons aggrieved may appeal to the next quarter sessions; and the judgment there to be final. 6 G. 2. c. 35. Selling or procuring chances in foreign lotteries. Appeal.

(A) Form of Notice by two Inhabitants to the Constable, and to the Overseers of the Poor, to ground a Prosecution on stat. 25 *G.* 2. *c.* 36. and 58 *G.* 3. *c.* 70. § 7. A.

To *A. C.* constable of the parish of ———, in the county of ———, and also to *A. O.* and *B. O.*, overseers of the poor of the said parish.

WE A. B. *and* C. D. *two of the inhabitants of the said parish of* ———, *paying scot and bearing lot therein, do hereby give you and each of you notice, that* A. I. *of the said parish of* ———, *innkeeper, doth keep a bawdy-house,* [or *gaming-house*, or *other disorderly house*, as the case may be,] *to wit, at his dwelling-house, in the said parish, called and known by the name of the* ——— *inn; and we do hereby also require you, the said constable and overseers of the poor, forthwith to go with us before some one of his majesty's justices of the peace in and for the said county of* ———, *to the intent that such proceedings may be had for the prosecution of the said* A. I. *for the said offence, as in and by the statute made and passed in the twenty-fifth year of the reign of the late King* George *the second, intituled* An act for the better preventing of thefts and robberies, and for regulating places of public entertainments, and punishing persons keeping disorderly houses, *are directed and required.*

Witness our hands, this ——— *day of* ———, *&c.*

A. B.
C. D.

B. (B) Affidavit of the Truth of such Notice before a Justice of the Peace.

——— } A. B. *and* C. D. *severally make oath and say, that* to wit. } *they severally believe the contents of the notice hereunto annexed* [*a copy of which they have caused to be served on* A. C. *constable of the parish of* ———, *and also upon* A. O. *and* B. O., *overseers of the poor of the said parish of* ———, *in the said county,*] *to be true in substance and matter of fact.*

A. B.
C. D.

Sworn by A. B. *and* C. D. *this* ——— *day of* ———, *in the year of our Lord* ———, *before me,* J. P. *esquire, one of his majesty's justices of the peace in and for the county of* ———. J. P.

C. C. Form of Recognisance to give material Evidence.

——— } *BE it remembered, that* A. B. *of the parish of* ——, to wit. } *in the said county, mercer, and* C. D. *of the same, grocer, on the* ——— *day of* ———, *in the year of our Lord* ———, *at* ——— *aforesaid, in the county aforesaid, came before me,* J. P. *esquire, one of his majesty's justices of the peace in and for the said county, and severally acknowledged themselves to be indebted to our sovereign lord the king in the sum of twenty pounds each.*

Whereas the above-bounden A. B. *and* C. D. *have given notice in writing to* A. C., *constable of the said parish of* ———, *and also to* A. O. *and* B. O., *overseers of the poor of the said parish of* ———, *that one* A. I. *of* ——— *aforesaid, innkeeper, doth keep a bawdy-house* [*gaming-house, or other disorderly house*] : *Now the condition of the above obligation is such, that if the above-bounden* A. B. *and* C. D. *shall give or produce material evidence against the said* A. I.

[redacted]

A. I. *of* ——— *aforesaid, in the county aforesaid, innkeeper, doth keep a bawdy-house,* [*gaming-house, or other disorderly house,*] *to wit, in the said parish of* ——— *and county of* ———, *and having severally made affidavit of their belief in the truth of the contents of the said notice, have also severally entered into a recognisance in the penal sum of* ——— *pounds each before me, the undersigned justice, on condition that they shall give or produce material evidence against the said* A. I. *for the said offence. Now the condition of this present recognisance is such, that if the above-bounden* A. C. *or* A. O. *and* B. O. *do and shall prosecute with effect the said* A. I. *for the said offence, then this recognisance to be void, otherwise of force.*

Acknowledged before me,

J. P.

E. Warrant to apprehend the Keeper of a disorderly House. E.

To the constables of the parish of ———, in the said county.

——— to wit. } *WHEREAS* A. B. *and* C. D., *two of the inhabitants of the parish of* ———, *in the county of* ———, *paying scot and bearing lot within the said parish, have given notice in writing to* A. C., *constable of the said parish, and also to* A. O. *and* B. O., *overseers of the poor of the said parish, that* A. I. *of the said parish, innkeeper, doth keep a bawdy-house* [*gaming-house, or other disorderly house,*] *in the said parish of* ———; *and have also this day severally made affidavit before me one of his majesty's justices of the peace in and for the said county, that they believe the contents of the said notice to be true; and have also severally entered into a recognisance in the penal sum of twenty pounds each, on condition to give or produce material evidence against the said* A. I.: *These are therefore to command you forthwith to bring the said* A. I. *before me at this place, to be bound over to appear at the next general quarter sessions of the peace to be held in and for the said county, there to answer to such bill of indictment as shall be found against him for such offence. Given under my hand and seal, &c.*

F. Allowance of Constable's Expenses in the Prosecution by two Justices, and Order on Overseers to pay them. F.

——— to wit. } *WHEREAS* A. C., *constable of the parish of* ———, *in the said county, hath this day made oath before us,* J. P. *and* M. N. *esquires, two of his majesty's justices of the peace in and for the said county, that he hath truly and* bonâ fide *expended the sum of* ——— *in the prosecution of one* A. I. *for keeping a bawdy-house* [*gaming-house, or other disorderly house,*] *at* ——— *aforesaid, in pursuance of the condition of the said* A. C.'*s recognisance: Now we, the said justices, do hereby ascertain and allow the said* A. C. *the said sum of* ——— *as and for the reasonable expenses of the said prosecution, and we do hereby require the overseers of the poor of the said parish of* ——— *forthwith to pay the said* A. C. *the said sum of* ———.

In witness whereof we have hereunto set our hands at ——— *aforesaid, in the county aforesaid, this* ——— *day of* ———, *in the year of our Lord* ———.

J. P.
M. N.

Gaols and Houses of Correction.

Breaking Gaol. See Vol. III. tit. **Prison-breaking.**

I. *Repeal, in Whole or in Part, of certain Acts by Stat.* 4 G. 4. c. 64.

II. *To what Prisons Stat.* 4 G. 4. c. 64. — 5 G. 4. c. 85. *extend.*

III. *Who shall have the keeping of Gaols.*
[14 Ed. 3. stat. 1. c. 10. — 19 H. 7. c. 10. — 3 G. 1. c. 15.]

IV. *How many Gaols and Houses of Correction to be in each county, &c.*
[4 G. 4. c. 64.]

V. *Building and repairing Gaols, &c.*
[4 G. 4. c. 64. — 7 G. 4. c. 18.]

VI. *Arrangement in the Construction of Prisons for classification, &c.*
[4 G. 4. c. 64. — 5 G. 4. c. 85.]

VII. *Expenditure incurred in building, &c. provided for*

(*b*) *Sheriff.*
[4 G. 4. c. 64.]

(*c*) *Keepers, Matrons, Turnkeys.*
[4 G. 4. c. 64.]

(*d*) *Chaplains.*
[4 G. 4. c. 64.]

(*e*) *Surgeons.*
[4 G. 4. c. 64.]

(*f*) *Annual Statement to Secretary of State, of the Establishment of Officers and Servants.*
[5 G. 4. c. 85.]

XIV. *Prisoners.*

(*a*) *Commitment, Receiving.*
[4 G. 4. c. 64.]

(*b*) *Employment.*
[4 G. 4. c. 64. — 5 G. 4. c. 18. 85.]

(*c*) *Delivery. — Supply on Discharge.*
[4 G. 4. c. 64. — 5 G. 4. c. 85.]

(*d*) *Escape or Attempt to Escape.*
[4 G. 4. c. 64.]

(*e*) *Punishment of Refractory.*
[4 G. 4. c. 64.]

(*f*) *Removal in certain Cases.*
[31 G. 2. c. 2. — 24 G. 3. sess. 2. c. 56. — 4 G. 4. c. 64.]

XV. *Annual Report to Secretary of State.*
[4 G. 4. c. 64.]

XVI. *Fines and Penalties. — Recovery and Application. — Appeal.*
[4 G. 4. c. 64.]

XVII. *Saving of Rights.*
[4 G. 4. c. 64.]

XVIII. *Debtors. — Arrest. — Confinement. — Treatment.*
[32 G. 2. c. 28. — 4 G. 4. c. 64.]

XIX. *Prisons of the King's Bench and Marshalsea.*
[53 G. 3. c. 113.]

XX. *Of County Gaols in Counties divided into Ridings and Divisions; and of Sessions for such Gaols.*
[5 G. 4. c. 12. — c. 85.]

XXI. *Contracts by Justices having Charge of any Gaol or House of Correction in any City, Town, Borough, Port, or Liberty, with the Justices having Charge of any Gaol of the adjacent County, Riding, &c. for Support in such last-mentioned Gaol of Prisoners committed thereto from such City, &c.*
[5 G. 4. c. 85.]

I. Repeal, in Whole or in Part, of certain Acts, by Stat. 4 G. 4. c. 64. § 1.

4 G.4. c.64.

By stat. 4 *G.* 4. *c.* 64., intituled *An act for consolidating and amending the laws relating to the building, repairing, and regulating of certain gaols and houses of correction in* England *and* Wales, § 1., after reciting, that whereas the laws now existing relative to the building, repairing, and regulating of gaols and houses of correction in *England* and *Wales*, are complicated, and have in many cases been found ineffective: And whereas it is expedient that such measures should be adopted, and such arrangements made in prisons, as shall not only provide for the safe custody, but shall also tend more effectually to preserve the health and to improve the morals of the prisoners confined therein, and shall ensure the proper measure of punishment to convicted offenders: And whereas due classification, inspection, regular labour and employment, and religious and moral instruction, are essential to the discipline of a prison, and to the reformation of offenders: And whereas the present laws directing the separation, superintendence, employment, and instruction of prisoners, require to be amended and enlarged, and to be more uniformly and strictly carried into effect, and it is therefore expedient that the most useful provisions contained in the several statutes and acts, and parts of statutes and acts hereinafter mentioned, should be consolidated, and that some new provisions should be added thereto; it is enacted, that from and after the commencement of this act (*a*), the several statutes and acts, and parts of statutes and acts following, shall be repealed, so far as relates to such gaols or prisons, or houses of correction, as this act shall extend to; (that is to say,) so much of stat. 1 *Ed.* 3. *st.* 1. *c.* 7. as relates to enquiry to be made of gaolers, which by duress compel prisoners to appeal;

Recited acts in part or in whole, so far as relates to prisons, to which this act shall extend, repealed.

1 Ed. 3. st. 1. c. 7.

And also so much of stat. 4 *Ed.* 3. *c.* 10. as relates to sheriffs and

And also so much of stat. 2 *G.* 2. *c.* 22. as relates to prisoners being allowed by keepers of prisons and gaols to send for victuals and other necessaries, and to the taking of fees, and the making and hanging up tables thereof, and to enquiries concerning the same, and to the hearing of complaints of extortion against gaolers, and examining into gifts and legacies for the benefit of poor prisoners, and hanging up tables thereof; 2 G.2. c.22.

And also so much of stat. 14 *G.* 2. *c.* 33. as relates to repairing, enlarging, and building houses of correction, and to buying houses and lands for that purpose; 14 G.2. c.33.

And also so much of stat. 16 *G.* 2. *c.* 31. as relates to the escape of prisoners from any gaol or prison to which this act extends; 16 G.2. c.31.

And also so much of stat. 17 *G.* 2. *c.* 5. as relates to the erecting, enlarging, and managing houses of correction, and the finding (*a*) or turning out masters of them for misbehaviour; 17 G.2. c.5. (*a*) *Sic.* Qu. fining.

And also so much of stat. 24 *G.* 2. *c.* 40. as relates to the retailing of spirituous liquors in gaols, prisons, or houses of correction, to the carrying of liquors into the same, to the search for such liquors, and to the hanging up of a copy of certain clauses of the said act, in such gaols, prisons, or houses; 24 G.2. c.40.

And also so much of stat. 32 *G.* 2. *c.* 28. as relates to prisoners being allowing to send for victuals and other necessaries, and to the settling, signing, reviewing, enrolling, and hanging up of tables of fees, rates, and benefactions, and rules for the government of gaols and prisons; 32 G.2. c.28.

And also stats. 18 *G.* 3. *c.* 58. — 18 G.3. c.58.
14 *G.* 3. *c.* 59. — 14 G.3. c.59.
22 *G.* 3. *c.* 64. — 22 G.3. c.64.
24 *G.* 3. st. 2. *c.* 54. — 24 G.3. st.2. c.54.
24 *G.* 3. st. 2. *c.* 55. — 24 G.3. st.2. c.55.
and
29 *G.* 3. *c.* 67. — 29 G.3. c.67.
} *in toto.*

And also stat. 31 *G.* 3. *c.* 46., except as it relates to the imprisonment and employment in hard labour, in the common gaol of the county, of prisoners sentenced to transportation, or to whom the royal mercy shall be extended, on condition of transportation; (*a*) 31 G.3. c.46.

And also stats. 55 *G.* 3. *c.* 48. — 55 G.3. c.48.
and
58 *G.* 3. *c.* 32. — 58 G.3. c.32.
} *in toto.*

Save and except so far as the said acts, or any of them, repeal any former act or acts, or any clause, matter, or thing therein; and also save and except as to any proceeding for the punishment of any person for any offence which shall, before the commencement of this act, (*Sept.* 1st, 1823,) have been committed; and as to any presentment before that time made by any justice of the peace or grand jury; and as to any appointment before that time made by any officer or other person, to perform any duties under the said recited acts, or any of them; and as to any rules and regulations, acts and deeds before that time lawfully established, made, or done, under or by virtue of any one or more of the said acts; and as to the fulfilment of any contracts or agree- Exception.

(*a*) But this excepted provision is since repealed by stat. 5 *G.*4. c.84. § 29.

ments before that time lawfully made, under or by virtue of the said recited acts, or any of them.

II. To what Prisons Stats. 4 G. 4. &c. extend.

[4 G. 4. c. 64. § 2. 76. — 5 G. 4. c. 85. § 9. 27.]

4 G. 4. c. 64. In each county, riding, &c. and in each city, mentioned in schedule (A) annexed, there shall be one gaol and one house of correction.

By stat. 4 *G.* 4. *c.* 64. § 2. It is enacted, that from and after the commencement of this act there shall be maintained, at the expense of every county in *England* and *Wales*, *one common gaol* (*a*); and at the expense of every county not divided into ridings or divisions, and of every riding or division of a county (having several and distinct commissions of the peace, or several or distinct rates in the nature of county-rates, applicable by law to the maintenance of a prison for such division,) in *England* and *Wales*, at least *one house of correction*; and one gaol and one house of correction shall be maintained in the several cities, towns, and places mentioned in the schedule marked (A.) annexed to this act (*b*); and the regulations and provisions contained in this act shall extend, in manner hereinafter mentioned, to every such gaol and house of correction, maintained at the expense of such county, riding, division, city, town, or place, and to the several gaols and houses of correction in the cities of *London* and *Westminster*.

This act shall extend to such gaols, and to the prisons in London and Westminster.

5 G. 4. c. 85. Not to extend to certain prisons, hulks, &c.

By § 76., and by stat. 5 *G.* 4. *c.* 85. § 27. Nothing in these acts contained shall extend to the royal hospital of *Bethlehem* and prison of *Bridewell*, nor to the K. B. or *Fleet* prison, or to the prison of the *Marshalsea* or palace courts, the general penitentiary at *Milbank*, nor to the general penitentiary at *Gloucester*; nor (by stat. 4 *G.* 4. *c.* 64. § 76. only) to any ships or vessels provided in any port or navigable river for the reception and employment of convicts sentenced to transportation; nor to exempt any such convicts from any punishment or discipline to which they were liable by law before the passing of this act.

III. Who shall have the keeping of Gaols

A gaoler *de facto* is as much punishable for a misdemeanor in his office as if he was a rightful gaoler. 2 *Haw. c.* 19. § 23.

When a sheriff quits his office, the custody of the county gaol can only belong to his successor. 1 *Ld. Raym.* 136.

IV. How many Gaols, &c. to be in each County, &c.

[4 G. 4. c. 64. § 3. 8. 48. *Vide* § 2. *ante*, 681.]

4 G.4. c.64. Houses of correction already established may be retained to be used for particular classes of prisoners.

By stat. 4 *G.* 4. *c.* 64. § 3. Where there shall have been already established, and shall be existing at the time of passing of this act, (1 *Sept.* 1823,) in any county, riding, division, city, town, or place, one or more house or houses of correction, not sufficient or capable of being made sufficient for the extended classification required by this act, it shall be lawful for the justices assembled at their general or quarter sessions, or the major part of them, if they shall so think fit, to order and direct that, in addition to the house of correction herein-before directed to be maintained for the purposes of this act, one or more of such houses of correction as shall be so existing as aforesaid at the time of the passing of this act, shall be continued and maintained for the reception of one or more particular class or classes, or description or descriptions of prisoners, as may be prescribed by the justices assembled at their general or quarter sessions, as directed by this act.

Where the inhabitants of any district, &c. shall be contributory to the support and maintenance of the house or houses of correction of the county, &c. in which such district, &c. is situate, it is not necessary to build a house of correction for such district, &c.

§ 8. In all cases where the inhabitants of any district, city, town, or place (mentioned in schedule (A),) are or shall be contributory to the support and maintenance of the house or houses of correction of the county, riding, or division in which such district, city, town, or place is situate, it shall not be necessary or required that any other house of correction shall be built or maintained in or for such district, city, town, or place, and the inhabitants of such district, city, town, or place, shall not be compelled or compellable to the payment of any rate, or sum of money whatever for the building or maintaining of any other house of correction in or for such district, city, town, or place.

Gaols, though locally situate out of the county, &c. shall be deemed part of the county, &c. and subject to the jurisdiction of the justices of the county, &c.

§ 48. Every gaol, house of correction, or other prison, for any county, riding, or division, county of a city, or county of a town, or for any town, liberty, soke, or place, not being a county, but having an exclusive jurisdiction for the trial of felonies or misdemeanors committed therein, which is now built, or shall hereafter be built, together with the ground whereon the same shall stand, and every court, yard, building, and appurtenance thereunto belonging, with every addition that shall hereafter be made thereto, which said gaol, house of correction, or other prison, court, yard, building, appurtenance, or addition, is or shall be situate within the limits of any other county, riding, or division, county of a city, county of a town, or of any other town, liberty, soke, or place, not being a county, but having an exclusive jurisdiction for the trial of felonies or misdemeanors committed therein, shall be deemed and taken to be part of the county, riding, or division, county of a city, county of a town, or of the town, liberty, soke, or place for which the same shall be used as a gaol, house of correction, or other prison, so long as the same shall be so used, and no longer; and the justices of the peace, mayors, jurats, coroners, constables, and other officers of such county, riding, or division,

4 G. 4. c. 64.

county of a city, county of a town, or of such town, liberty, soke, or place, for which the same shall be used as a gaol, house of correction, or other prison, shall during the time that the same shall be so used, have as full power and authority therein as they would have if the same was not situate within the limits of such other county, riding, or division, county of a city, county of a town, or of such town, liberty, soke, or place; any charter, law, or usage to the contrary thereof in anywise notwithstanding.

V. Building and repairing Gaols, &c.

[4 G. 4. c. 64. § 45, 46, 47. 50. — 7 G. 4. c. 18.]

On report or presentment of insufficiency of prisons, justices may contract for enlarging, building, or repairing the same.

By stat. 4 *G.* 4. *c.* 64. § 45. In case it shall appear at any time to the justices at any general or quarter sessions of the peace, holden in any county or riding, or in any such division of a county as aforesaid, or in any district, city, town, or place to which this act shall extend, by any report made under the provisions of this act, of the state of any prison, to such justices at such sessions, or by any presentment at any time made by the grand jury at the assizes, great session, session of gaol-delivery, or session of the peace, to be holden for any such county, riding, division, district, city, town, or place, or by any presentment at any time made by any two or more justices of the peace in and for the same, and laid before the justices at such general or quarter sessions of the peace, that any gaol or house of correction, to which this act shall extend, within such county, riding, division, district, city, town, or place, is insufficient, inconvenient, or in want of repair, or otherwise inadequate to give effect to the rules and regulations prescribed by this act, or that there is a necessity for the erection of any new gaol or house of correction; the justices assembled at such general or quarter sessions, or at the general or quarter sessions, or adjournment thereof, next after any such report or presentment made, shall and they are hereby required to cause notice to be given, three times, at least, in some public newspaper circu-

Justices shall give notice in some newspaper of the county, &c.



4 G. 4. c. 64.

Justices may purchase houses, &c. for the purpose of building or enlarging any prison.

§ 46. After such presentment and notice, it shall be lawful for the justices in general or quarter sessions assembled, or the major part of them, and they shall have full power and authority to purchase any houses, buildings, lands, tenements, hereditaments, ways, watercourses, and other easements, for the purpose of enlarging or rendering commodious, or for the building or rebuilding any prison, and to direct the property so purchased to be conveyed to such person or persons as the said justices shall think fit, in trust for the purpose aforesaid, under the regulations and directions in this act contained; and such houses, buildings, lands, tenements, hereditaments, ways, watercourses, or other easements, shall, when enclosed and added to such prison, be deemed and taken to be parts of such prison, and to be within the county, riding, division, city, district, town, or place, to the use of which such prison may be applied, to all intents and purposes whatever, so long as the same shall be used by such county, riding, division, city, district, town, or place for the purpose of this act, and no longer.

If prison becomes unsafe or inconvenient, two justices may order repairs, and shall report to the sessions.

§ 47. If it shall at any time happen, that any such gaol or house of correction shall become unsafe or unfit for the custody of the prisoners confined therein, between the several times of holding the general or quarter sessions, it shall and may be lawful for any two or more justices (one of whom shall be a visiting justice for the prison) for the county, riding, division, district, city, town, or place, to order such repairs and alterations to be immediately done and made, as may be necessary and sufficient for the safe and proper custody of such prisoners, and the upholding of such prison; and such justices shall report the same to the next court of general or quarter sessions to be holden for such county, riding, division, district, city, town, or place; and such court is hereby authorised to order the payment of such sum or sums of money as shall have been properly expended in such repairs or alterations as aforesaid.

Justices may remove the site of prisons, upon express presentment that the old site was unfit and inconvenient.

§ 50. In case it shall be expressly presented that the place wherein any old prison is situated is improper, and that the prison ought to be removed to some other part of the county, riding, division, district, city, town, or place, or that a new gaol or house of correction is necessary, the justices in their general or quarter sessions assembled shall take such presentment into their consideration, and if it shall be resolved by the justices assembled at two successive general or quarter sessions, or the major part of them, that such old prison ought to be removed, or that such new prison is necessary, it shall be lawful for the justices so assembled to contract for the building of a new gaol or house of correction in any part of the county, riding, division, district, city, town, or place which they may deem most eligible; and whenever the site of any prison shall be changed, and the old site shall be no longer necessary for the purpose of a prison, it shall be lawful for the justices so assembled to make sale thereof, (unless it be the property of the king's majesty, his heirs and successors, or of some private individual,) for the best price that can be gotten for the same, and to direct the purchase-money to be paid to the treasurer of such county, riding, division, district, city, town, or place, and to direct the trustee of such lands and hereditaments, his heirs, executors, or administrators (according to the tenure

4 G. 4. c. 64.

thereof), and the clerk of the peace, or town-clerk, to convey the inheritance of such site to the purchaser; and every such conveyance, together with the treasurer's receipt for the purchase-money, shall give a good and valid title to the purchaser; and the purchase-money shall be applied by the treasurer in aid of the rate of such county, riding, division, district, city, town, or place; and whenever the building of any court of justice is or shall be so attached to any prison, as to render it impracticable or inconvenient to repair, enlarge, improve, or rebuild the said prison, without also altering or pulling down the building of the said court, then and in such cases it shall be lawful for the justices in general or quarter sessions assembled to cause such courts to be altered or pulled down, or to be rebuilt, either on the same or on any other site, subject to the same provisions as are by this act appointed with respect to gaols.

Where any courts of justice are attached to prisons, they may be altered, &c.

7 G. 4. c. 18.

By stat. 7 *G.* 4. *c.* 18. § 1. After reciting that by 4 *G.* 4. *c.* 64. provision is made for the sale in certain cases of the sites of old prisons which are no longer necessary, and that it is expedient to extend the same power to cases not therein provided for; it is enacted, that in case it shall appear to the justices of the peace who shall be assembled at any general or quarter session of the peace to be henceforth holden for any county, riding, or division in *England*, that by reason of any gaol or house of correction for such county, riding, or division, having been lately built or considerably enlarged, any other gaol or gaols, house or houses of correction therein hath or have or shall have become unnecessary, the said justices, or the justices who shall be assembled at the then next general or quarter session to be holden for the same county, riding, or division, shall order notice to be given three times at least in some public newspaper circulating in such county, riding, or division, that the propriety of selling such unnecessary gaol or gaols, house or houses of correction, will be taken into consideration at the next ensuing general or quarter sessions; and in case the justices at such last mentioned session, or the majority of them, shall re-

If justices shall consider any gaol, &c. unnecessary, they shall order notice to be given that the sale thereof will be taken into consideration at the next session; when they may order the sale thereof.

[redacted]

at the next ensuing general or quarter session; and in case the justices at such last-mentioned session, or the majority of them, shall resolve that the contract so entered into ought to be confirmed and completed, either with or without any modification of the conditions thereof, then it shall be lawful for such justices, and they are hereby required, to order that such contract be confirmed and completed accordingly. 4 G. 4. c. 64.

§ 3. Whenever a sale of any gaol or house of correction shall be made, or the contract heretofore entered into for any such sale shall be ordered to be confirmed and completed, pursuant to the directions in this act contained, and the purchase-money for the same paid to the treasurer of the county, riding, or division hereby authorised to dispose thereof, it shall be lawful for the trustees or trustee of every such gaol or house of correction, if any, and the clerk of the peace of such county, riding, or division, to convey or surrender such gaol or house of correction, with the outhouses, land, and appurtenances thereto belonging, unto and to the use of the purchaser thereof, and his or her heirs, or to such uses as he or she shall direct or appoint; and every such conveyance or surrender, together with the treasurer's receipt for the purchase-money, shall give a good and valid title to the purchaser; and the purchase-money shall be applied, by the treasurer, towards discharging the expense which shall have been incurred in building or enlarging any gaol or house of correction for the same county, riding, or division, or in aid of the rate of the same, as the justices of the peace for such county, riding, or division, in general or quarter session assembled, shall direct.

Prison, when sold, to be conveyed by the trustees, &c. to the purchaser; and such conveyance shall give a valid title.

Application of purchase-money.

§ 4. Provided, that if in the event of any sale being effected or confirmed in pursuance of this act, it shall appear to the justices by whom the resolution for making or confirming such sale shall be entered into, that the property so sold has never been vested in any trustees, or that the trustees thereof are dead, then it shall be lawful for the said justices to order that such property shall be conveyed by the clerk of the peace to the purchaser thereof; and in such case a conveyance thereof by the clerk of the peace, by indenture of bargain and sale, (of which no enrolment shall be necessary), shall be valid and effectual to all intents and purposes.

When property is not vested in trustees, justices may order clerk of the peace to convey such property to purchaser.

As to magistrates of *cities*, &c. raising money to build or repair *county* gaols or houses of correction, in order to a contract with the justices having charge of the latter, for the support of prisoners committed thereto from such cities, &c. under stat. 5 G. 4. c. 85. § 1, 2, 3. See *post*, § XXI.

Magistrates of cities, &c. raising money to rebuild, &c. county gaols.

VI. Arrangement in the Construction of Prisons for Classification, &c.

[Stat. 4 G. 4. c. 64. § 49.]

By stat. 4 G. 4. c. 64. § 49. In the altering, enlarging, repairing, building, or rebuilding of any gaol or house of correction under this act, the justices shall adopt such plans as shall afford the most effectual means for the security, classification, health, inspection, employment, and religious and moral instruction of the prisoners; the building shall be so constructed or applied, and the keepers' and

Plans for prisons shall be such as to provide separate places of confinement, classification, &c.

4 G.4. c.64.

officers' apartments so situated, as may best ensure the safety of the prison, and facilitate the control and superintendence of those committed thereto; distinct wards, and dry and airy cells shall be provided, in which prisoners of the several descriptions and classes hereinafter enumerated may be respectively confined; and it shall be considered as a primary and invariable rule, that the male prisoners shall in all cases be separated from the female, so as to prevent any communication between them: provision shall be made for the separation of prisoners into the following classes:—

If a Gaol.

1st. Debtors, and persons confined for contempt of court on civil process.

2dly. Prisoners convicted of felony.

3dly. Those convicted upon trial of misdemeanors.

4thly. Those committed on charge or suspicion of felony.

5thly. Those committed on charge of misdemeanors, or for want of sureties.

If a House of Correction.

1st. Prisoners convicted of felony.

2dly. Prisoners convicted upon trial of misdemeanors.

3dly. Those committed on charge or suspicion of felony.

4thly. Those committed on charge of misdemeanors.

5thly. Vagrants.

Places of confinement shall also be set apart in every gaol and house of correction for such prisoners as are intended to be examined as witnesses in behalf of the crown in any prosecutions, and such further means of classification shall be adopted as the justices shall deem conducive to good order and discipline; separate rooms shall be provided as infirmaries or sick-wards for the two sexes, and as far as is practicable for the different description of prisoners; and warm and cold baths, or bathing tubs, shall be introduced into such parts of the prison as may be best adapted for the use of the several classes; proper yards shall be allotted to the different classes for air and exercise, and each class shall have the use of a privy, and be furnished with a supply of good water; a separate sleeping cell shall, if possible, be provided for every prisoner; but as the numbers may sometimes be greater than the prison is calculated to contain, under the arrangement required by this act, and as it is expedient that two male prisoners only should never be lodged together, a small proportion of cells or rooms shall be provided for the reception of three or more persons; every prison shall contain rooms and places properly fitted up for the exercise of labour and industry, and also a competent number of cells adapted to solitary confinement, for the punishment of refractory prisoners, and for the reception of such persons as may by law be confined therein; a chapel shall be provided in every prison, in such a convenient situation as to be easy of access to all the prisoners; it shall be fitted up with separate divisions for males and females, and also for the different classes; it shall be strictly set apart for religious worship, or for the occasional religious and moral instructions of the prisoners, and shall never be appropriated to or employed for any other purpose whatsoever; in cases where the justices shall deem it necessary that the chaplain should reside, either occasionally or permanently,

within the prison or near to it, proper apartments shall be provided therein, or in the neighbourhood thereof, for his accommodation. 4 G. 4. c. 64.

By stat. *5 G. 4. c.* 85. § 10. Reciting, "whereas in some other counties and places to which stat. *4 G. 4. c.* 64. extends, by reason of the small number of prisoners usually confined therein, it may not be necessary to provide the whole number of wards and airing grounds thereby required, but it is necessary to provide that in all prisons some certain means of classification should be secured;" it is enacted, "that in every prison to which the said recited act extends, except *Canterbury*, *Lichfield*, and *Lincoln*, provision shall be made for the following classification, at the least:— 5 G. 4. c. 85. Classification of prisoners in counties, &c. where the whole number of wards, &c. is not provided.

"In all such gaols, the male and female prisoners shall be confined in separate wards or parts of the gaol. The male prisoners shall be divided into five classes: first, debtors, and persons committed for contempt of court on civil process: second and third, prisoners convicted, who may be put into either of these classes, as to the visiting magistrates may seem meet, reference being had to the character and conduct of the prisoners, and the nature of their offence: fourth and fifth, prisoners committed for trial, who may also be put into either of these two classes, as to the visiting magistrates may seem meet, reference being had in like manner to the character and conduct of the prisoners, and the nature of their offence.

"The female prisoners shall be divided at least into three classes: first, debtors and persons committed for contempt of court on civil process; second, prisoners convicted; third, prisoners committed for trial.

"In all such houses of correction, the male and female prisoners shall also be confined in separate wards or parts of the house. The male prisoners shall be divided into five classes: first and second, prisoners convicted, who may be put into either of such classes, as to the visiting magistrates may seem meet, regard being had to the character and conduct of the prisoners, and the nature of their offence: third and fourth, prisoners committed for trial, in all houses of correction where such prisoners are received; such prisoners may be put into either of these classes, as to the visiting magistrates may seem meet, regard being had, as already mentioned, to the character and conduct of the prisoner, and the nature of his offence: fifth, vagrants.

"In places where the gaol and house of correction are united, the male prisoners shall be divided into six classes at least:—first, debtors and prisoners committed for contempt of court on civil process: second and third, convicted prisoners: fourth and fifth, those committed for trial; such prisoners to be assigned to either of these classes of prisoners convicted or committed respectively, as to the visiting magistrates shall seem meet, regard being always had to the character and conduct of the prisoners, and the nature of their offence: sixth, vagrants.

"The female prisoners, in each of such houses of correction, shall be divided into three classes: first and second, prisoners convicted; the prisoners to be put into either of such classes, as to the visiting magistrates shall seem meet, regard being had to their character and conduct and the nature of their offence; vagrants shall be assigned to one or the other of these classes, as the

5 G. 4. c. 85.

visiting magistrates, in their discretion, may see meet: third, where females are committed to any house of correction before trial, they shall be kept in a class by themselves."

Regulations as to classification, which may be dispensed with in Welch counties, on application to privy council.

By § 11. Reciting, "whereas in some counties of *Wales* it may be consistent with the due classification of the prisoners, to dispense with some of the wards or airing-grounds required by the said recited act and this act;" it is enacted, that if the court of quarter sessions of any county in *Wales* shall, during the present year, present a petition to the lords of H. M.'s privy council, setting forth the whole number of prisoners imprisoned in the common gaol and house and houses of correction of such county, within the last 7 years, with the causes of their imprisonment respectively, so as to exhibit in which of the classes prescribed by stat. 4 *G.* 4. *c.* 64., or this act, each such prisoner would have been included, and showing also the greatest number of such prisoners imprisoned in such gaol and house or houses of correction, at any one time in each of the said 7 years; and setting forth fully and particularly the then state of such gaol and house or houses of correction, and an estimate of the expense which would be incurred by enlarging such gaol, or such house of correction, to which the petition shall apply, so as to admit of the whole number of wards and airing-grounds required by the said act or this act, and the amount of the county rate for each of the said 7 years, and praying a dispensation with some part of the wards or other accommodations required by the said act or this act, which under the circumstances of such county may to such court appear unnecessary, it shall be lawful for the said lords of the privy council to take such petition into their consideration, and if they shall see fit, to make an order thereon, directing in what manner and to what extent it shall be sufficient for such county to comply with the provisions of the said act and this act, and making such regulations touching the same as to them shall seem meet; and such county duly complying with such order shall not be liable to be indicted, or otherwise impeached, for not further conforming



VII. Expenditure incurred in Building, &c. provided for.

[4 G. 4. cc. 63, 64. § 54, 55. 68.]

4 G.4. c.63. On application of the quarter sessions of any county, the commissioners under recited act may make advances of money for building or repairing gaols, &c.

Justices to make rates for repayment of money advanced, and assign the rates as a security.

Money advanced to be repaid in 20 years.

By stat. 4 *G.* 4. *c.* 63. After reciting stat. 3 *G.* 4. *c.* 86. it is enacted, that upon the application of the major part of the justices of any county, riding, division, city, town, or place in *England*, in quarter sessions assembled, such major part to consist of five at the least, it shall be lawful for the commissioners to make advances, under the powers, authorities, provisions, and regulations of the said acts, for the building, rebuilding, enlarging, improving, repairing, or fitting up of any gaols or houses of correction in *England*, in like manner in every respect as if gaols and houses of correction had been included in the provisions of the said act; and it shall be lawful for the justices of the peace, authorised to make rates for the repairing of any gaol or house of correction, to receive any money so advanced, and to apply the same to the purposes for which such advances shall be made, and to make rates for the repayment of any money so advanced in such manner, and in such proportions, and at such times, as shall be required by the said commissioners; and also to assign the rates so to be made as a security for the said advances, in such manner and form as the said commissioners shall direct and appoint, so that all sums so advanced, with interest thereon at the rate specified in the recited act of 3 *G.* 4. shall be fully repaid within the period of 20 years from the advancing thereof; and all such rates shall be made, assessed, levied, and recovered, in like manner as county-rates may, and shall continue in force until all such advances, with interest after the rate aforesaid, shall be fully paid and discharged.

4 G.4. c.64. When amount of estimate for building, &c. exceeds one half of the annual county-rate, such county-rate may be mortgaged.

By stat. 4 *G.* 4. *c.* 64. § 54. It is enacted, that when it shall appear that the amount of any estimate approved by the justices, for the building or rebuilding, repairing or enlarging any gaol or house of correction, under the powers of this act, shall exceed one half of the amount of the ordinary annual assessment for the rate of any county or riding, or of any such division of a county as aforesaid, or of any district, city, town, or place, (such ordinary assessment to be taken on an average of such rate for the last seven years preceding,) it shall and may be lawful for the justices, in quarter sessions assembled, from time to time to borrow and take up on mortgage of such rate, by instrument in the form contained in the schedule to this act annexed marked (C), or to the like effect, any sum of money not exceeding the amount of such estimate, in sums not less than 50*l.*, nor exceeding 100*l.* each, at interest, as to the said justices shall appear necessary and expedient for the purposes aforesaid, and to secure every such sum of money so borrowed upon the credit of the said rate; and it shall and may be lawful for the justices so assembled, and they are hereby authorised to treat and agree with any person for the loan of any such sums of money, and by their order to confirm every such agreement; and every such agreement, signed by the chairman and two or more other justices present at the time of making such order, shall be and the same is hereby declared to be effectual for

4 G. 4. c. 64.

securing to the person so advancing any such sum of money every such sum, with interest for the same, on such terms as in and by such agreement shall be stipulated; and copies or extracts of all such agreements shall be kept with the clerk of the peace; and it shall and may be lawful for every person who shall be entitled to the money thereby secured, and such person is hereby empowered (by indorsing his name on the back of such security) to transfer the same, and his right to the principal money and interest thereby secured, unto any other person; and every such assignee may in like manner transfer the same again, and so *toties quoties*; and the person to whom such security or any such assignment thereof shall be made, and his executors, administrators, and assigns, shall be creditors upon the said rate in an equal degree one with another, and shall not have any preference with respect to the priority of any monies so advanced.

Justices may charge county-rates, so as the money borrowed be repaid in 14 years, with interest.

By § 55. It is enacted that the said justices shall and they are hereby authorised and required to charge the rate to be raised upon such county, riding, division, district, city, town or place, not only with the interest of the money so borrowed, but also with the payment of such further sum as shall ensure the payment of the whole of the sum borrowed within fourteen years from the time of borrowing the same; and such sums shall be assessed on the county, riding, division, district, city, town, or place, in such manner as county rates are directed to be assessed by the laws now in being, and paid and applied under the direction of the justices, in discharge of the interest, and of so many of the principal sums on the said securities, as such money will extend to discharge in each year, until the whole of the money for which such securities shall be made, and the interest thereof, shall be fully paid and discharged; and the justices are required to fix one or more day or days in each year on which such payment shall be made, and shall make orders for assessments in due time, so as to provide for the regular payment thereof: And they are hereby required to

Books to be kept of receipts

[redacted]

By stat. *5 G. 4. c.* 85. § 20. Reciting, whereas by stat. *4 G. 4. c.* 64., and by stat. *5 G. 4. c.* 12. (see *post*, § XX.) the justices of the peace in quarter sessions assembled have, in certain cases, authority to borrow on mortgage of the rate of the county, riding, division, district, city, town, or place, money for the purpose of building, rebuilding, repairing, or enlarging the gaol or house of correction, and to charge the said rate with such sum as shall ensure the payment of the whole sum borrowed, with interest, within *fourteen* years: And whereas, for the purpose of facilitating the *reduction of the rate of interest*, it may be expedient that the county, riding, division, district, city, town, or place should have power to borrow in like manner, on mortgage of its rate, a further sum for the purpose of paying off the principal sum so borrowed and secured as aforesaid; be it further enacted, that whenever it shall appear to the justices assembled at any general or quarter sessions to be holden for any county, riding, division, district, city, town, or place, having contracted a debt under the said recited acts, that advantage may arise from paying off the same and borrowing *at a lower rate of interest*, it shall be lawful for the justices so assembled to borrow on mortgage of such rate by instrument in the form directed by the said first recited act any sum or sums of money not exceeding in the whole the principal sum of money that may then be outstanding on the securities so theretofore granted, and therewith to discharge the whole or any part of the money for which such securities shall have been given: Provided always, that it shall not be lawful to use or apply any portion of the money to be borrowed under this provision, for any purpose other than the payment and discharge of the whole or part of the principal sum then due on the securities granted under the said recited acts; provided also, that the money to be borrowed under this provision shall be borrowed on such terms and under such conditions as shall in no way interfere with or prevent the full payment and discharge of the money borrowed under the provisions of the said recited acts, and so that the rate to be raised in such county, riding, division, district, city, town, or place, shall, within 14 years from the time when the money was originally borrowed under the provisions of the said recited acts, be discharged and released from all securities so made as aforesaid.

5 G.4. c.85.

Mortgage of rate to pay off securities. 4 G.4. c.64. 5 G.4. c.12.

Justices may borrow sums at lower interest to pay off principal sums borrowed.

By stat. *6 G. 4. c.* 40. § 1. Reciting the *4 G. 4. c.* 64. § 54. & 55., *5 G. 4. c.* 85. § 20. & *48 G. 3. c.* 96., and reciting that it might be convenient for the purpose of facilitating the reduction of the rate of interest on money borrowed in like manner, but under the provisions of any act or acts other than the said recited acts or either of them, that the justices of the peace should have power to borrow on mortgage of the said rate any sum or sums of money, not exceeding in the whole the principal sum of money that may then be outstanding, on any securities so granted under any such act or acts other than the said recited acts or either of them, and therewith to discharge the whole or any part of the money for which such last-mentioned securities shall have been given; and that it may enable justices of the peace, when at any time hereafter they shall treat with any person or persons for the loan of any sum or sums of money to be secured as directed by the said recited acts or either of them, or by any other such act or acts as aforesaid, to contract for such loan or loans upon terms more advantageous

6 G.4. c.40.

1 G. 4. c. 40.

to the county, riding, division, district, city, town, or place, for which such justices shall be then acting, than at present are likely to be obtained, if such justices have power so as aforesaid to borrow any such sum or sums of money, and therewith to discharge the security or securities held by any person or persons who shall be desirous that such security or securities so held by him, her, or them, shall be in whole or in part paid off and discharged; it is enacted, that whenever it shall appear to the justices of the peace, assembled at any general or quarter sessions to be holden for any county, riding, division, district, city, town, or place, for which any debt or debts shall have been contracted under the provisions of the said recited acts of the fourth and fifth years of the reign of his present majesty or of either of them, or under the provisions of the said recited act of the forty-eighth year of the reign of his late majesty, or under the provisions of any other act or acts, and which debt or debts shall be then remaining due in whole or in part, that advantage or convenience may arise to such county, riding, division, or place, from paying off the same, or any part thereof, and that whenever any person or persons holding any such security or securities shall wish and desire that the security or securities so held by him, her, or them, shall be paid off and discharged, it shall be lawful for the justices so assembled, if they shall think fit, to borrow on mortgage of the rate of the county, riding, division, district, city, town or place, for which such general or quarter sessions shall be holden, by instrument in the form directed by the said first recited act, any sum or sums of money not exceeding in the whole the principal sum of money that may then be outstanding on the securities thereto granted, and therewith to pay off and discharge the whole or any part of the money for which such securities shall have been given: Provided that it shall not be lawful to use or apply any portion of the money to be borrowed under the provisions of this act, for any purpose other than the payment and discharge of the whole or part of the principal sum then due on the securities granted as

Justices empowered to borrow money on mortgage of county-rates, to pay off any mortgage under recited acts.

Money not to be applied for any other purpose.

held by him, her, or them shall be paid off and discharged, such person or persons shall give to the justices so assembled as aforesaid notice in writing of such his, her, or their wish and desire: Provided that no such security or securities shall be so paid off and discharged until after the expiration of six months from the day on which such notice or notices shall have been so given. 6 G.4. c.40.

§ 3. The delivery of such notice of the clerk of the peace at the house or houses, or at the usual place or places of residence of the person or persons holding such security or securities as shall have been determined as aforesaid to be paid off and discharged, shall be taken and deemed to be a good and sufficient service of such notice. Delivery of notice to be deemed sufficient service.

§ 4. All interest payable on any security or securities ordered to be paid off and discharged, shall cease and determine on the day specified in such notice or notices, as being the day on which such security or securities is or are to be paid off and discharged: Provided that every person upon whom such notice of the clerk of the peace shall have been so served as aforesaid, and that every person whose security or securities shall in conformity to his or her wish and desire, notified as aforesaid, have been ordered to be paid off and discharged, shall be entitled, upon application made at any time after the expiration of the said six months to the treasurer of the county, by himself or herself, or by his or her attorney, to receive the principal sum or sums for which such security or securities shall have been granted, together with all interest due thereon. Interest to cease on the day specified in such notice.

§ 5. And whereas inconvenience and unnecessary expense is occasioned by justices of the peace not being authorised to borrow and take up, on the mortgage of the rate of the county or riding, or of any division of the county, or of the district, city, town, or place, such sum or sums of money as may be required for carrying into effect the provisions of the said recited acts of the fourth and fifth years of the reign of his present majesty, in sums exceeding one hundred pounds each; it is enacted, that so much of the said recited acts as directs that such sum or sums of money so to be borrowed and taken up shall be borrowed and taken up in sums not exceeding one hundred pounds each, be and the same is hereby repealed. So much of recited act as directs that the money borrowed shall be taken up in sums not exceeding 100*l.* each, shall be repealed.

By stat. 4 *G.* 4. *c.* 64. § 68. And, in order to defray the expenses of the several matters and things herein-before directed to be done, respecting gaols, houses of correction, and other prisons, and for the support and maintenance of prisoners confined therein, who are entitled by law to such support, and for all other expenses necessary to the execution of this act, and not herein-before particularly provided for; be it further enacted, that it shall and may be lawful for the justices, at their general or quarter sessions assembled, and they are hereby authorised and empowered, to cause such sums of money as shall be necessary for all or any of those purposes, to be raised on the counties, ridings, divisions, districts, cities, towns, or places to which this act shall extend, in the same manner as rates applicable to the building, repairing, or maintenance, of such prisons respectively, are now directed to be raised by law. 4 G.4. c. 64. Expenses of the execution this act to be charged upon the county-rates.

As to liability of cities to provide accommodation for prisoners, see stat. 5 *G.* 4. *c.* 85. § 15. *post*, p. 670.

VIII. Powers given to sell and convey Lands, &c.

[4 G. 4. c. 64. § 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67.]

4 G. 4. c. 64. Bodies politic, &c. empowered to sell and convey lands.

By stat. 4 *G.* 4. *c.* 64. § 56. It is enacted, that it shall be lawful for the king's most excellent majesty, his heirs and successors, and for all bodies politic and corporate, and also for all guardians, committees, husbands, trustees, and attornies of all persons being infants, lunatics, idiots, under coverture, or any other disability, and also for all other persons who are or shall be seised, possessed of, or interested in any houses, buildings, lands, tenements, hereditaments, easements, or privileges, which shall be deemed necessary for the purposes of this act, to contract or agree for, and to sell, convey, and assure such houses, buildings, lands, tenements, hereditaments, easements, and privileges, unto such person as shall be named by the justices at general or quarter sessions, in trust and for the purpose of erecting new prisons, or of enlarging old ones, and the yards, courts, and outlets thereunto belonging; and all such contracts, agreements, sales, conveyances, and assurances shall be valid and effectual in law to all intents and purposes whatsoever.

Where crown lands are necessary, treasury, &c. may convey the same.

§ 57. It is enacted, that whenever any lands or hereditaments of the king's majesty shall be requisite, and shall be contracted for, to be used for the purposes aforesaid, the same, if held by the king's majesty, his heirs or successors, in the right of his or their royal crown, shall and may be legally conveyed by an instrument, under the hands and seals of the lord high-treasurer, or of the commissioners of H.M.'s treasury, or of any three of them, and if parcel of the duchy of *Lancaster*, by an instrument under the hand and seal of the chancellor of the same duchy, and if parcel of the duchy of *Cornwall*, by an instrument under the hands and seals of the officers of the same duchy, authorised to grant leases under stat. 3 *G.* 4. *c.* 78. § 19, 20.

If parties refuse

By § 58. Whenever any such corporation, guardian, commit-

the matter of such neglect, refusal, or omission, or prevention to treat, or to accept of such price offered, or to agree for such sale as aforesaid, and the causes and reasons thereof respectively; and the person or persons, or some officer of any corporation so interested as aforesaid, in any such houses, buildings, lands, tenements, hereditaments, easements, and privileges, or some person on their behalf respectively, shall have liberty to attend such meeting, if they shall think fit, and to state to the justices there assembled their reasons for such neglect, refusal, or omission as aforesaid; and in case the justices at such last-mentioned sessions, or the major part of them, shall, after hearing what the parties interested as aforesaid, or their agents, have to allege in behalf of their respective interests, and upon due consideration had of such matter as aforesaid, resolve to proceed to the valuation and purchase of such lands, tenements, hereditaments, easements, or privileges, notwithstanding such neglect, refusal, or omission, or prevention as aforesaid, then and in every such case the justices at such sessions, or any two or more of them appointed for that purpose, shall cause the value of such houses, buildings, lands, tenements, hereditaments, easements, and privileges, to be enquired into and ascertained by a jury of indifferent men of the county, riding, division, district, city, town, or place wherein the same shall be situate, and to that end shall summon before such jury, and examine upon oath (which oath any one of the justices is hereby empowered to administer) any person or persons whomsoever; and such justices, or any two of them, shall, by ordering a view or otherwise, use all ways and means for the information of themselves, and of such jury in the premises; and when such jury shall have enquired of and ascertained by their verdict the value of such houses, buildings, lands, tenements, hereditaments, easements, and privileges, the said justices shall thereupon order that the sum which shall so appear to be the value of such houses, buildings, lands, tenements, hereditaments, easements, and privileges, shall be paid in such manner as is hereinbefore directed touching the money to be paid for such houses, buildings, lands, tenements, hereditaments, easements, or privileges, for sale whereof the persons interested shall contract and agree in manner aforesaid; which verdict and order shall be filed of record by the clerk of the peace, or other officer having the custody of the records of the county, riding, division, district, city, town, or place, and shall be final and conclusive, to all intents and purposes whatsoever, against all parties and persons whomsoever, claiming or to claim in possession, reversion, remainder, or otherwise, their heirs and successors, as well absent as present, infants, lunatics, idiots, and persons under coverture, or any other disability whatsoever, corporations, guardians, committees, husbands, trustees, and attornies, or any other person or persons whomsoever. 4 G. 4. c. 64.

How jury to be summoned and chosen.

§ 59. For the summoning and returning such juries, such justices, or any two of them, may issue their warrant to the sheriff or officer having the returning of writs within the county, riding, division, district, city, town, or place within the limits of which the houses, buildings, lands, tenements, hereditaments, easements, or privileges shall be situate, requiring him to impannel, summon, and return an indifferent jury of 24 persons, qualified to serve on juries, to appear before the said justices, or any two of them, at

G. 4. c. 64.

such time and place as in such warrant shall be appointed; and such sheriff or officer is hereby required to impannel, summon, and return such number of persons accordingly, and out of the persons so impannelled, summoned, and returned, or out of such of them as shall appear upon such summons, the justices, or any two of them, shall and they are hereby empowered and required to draw by ballot, and to swear, or cause to be sworn, twelve men, who shall be the jury for the purposes aforesaid; and in default of a sufficient number of jurymen so returned, the said sheriff or officer shall take such other honest and indifferent men of the bystanders, or that can speedily be procured to attend that service, as shall make up the number twelve; and all persons concerned shall have their lawful challenges against any of the persons impannelled when they come to be sworn; and the said justices, or any two of them, shall have power to impose a fine or fines on such sheriff or officer, or his deputy or deputies, making such default in the premises, and on any of the persons who shall be summoned and returned on such jury, and who shall not appear, or appearing shall refuse to be sworn on the said jury, or being sworn shall refuse to give or shall not give a verdict, or shall in any other manner wilfully neglect his or their duty therein; and also on any person who, being summoned and required to give evidence before the said jury, shall refuse or neglect to appear, or appearing shall refuse to be sworn or to give evidence, so that no such fine be more than 10*l.* nor less than 20*s.* on any one person for one offence.

Fines may be imposed for neglect of duty.

Expenses of jury, &c. how defrayed.

§ 60. In case any jury shall deliver a verdict for more money as the value of the houses, buildings, lands, tenements, hereditaments, easements, or privileges so to be purchased, than shall have been offered for the purchase thereof by the justices or their agent, to any person capable of contracting for the same, the costs and expenses of summoning and maintaining the jury and witnesses shall be borne and paid out of the same fund as the expenses of the buildings to be erected; but if such jury shall de-



make and execute, or procure to be made and executed to the person or persons so named by such justices, and his or their heirs, a good and sufficient conveyance or conveyances, thereby granting, releasing, or assigning to them the said houses, buildings, lands, tenements, or hereditaments, easements or privileges, and all such estate, right, title, term, or interest therein, or charge, encumbrance, or lien thereon; and immediately upon such payments, and entry of such verdicts of the said juries, and judgments, sentences, and decrees, orders, and other proceedings as aforesaid, the said lands, houses, buildings, and premises shall vest in the person or persons to be so named by the said justices, and his and their heirs, and he and they shall be deemed in law to be in the actual seisin and possession thereof, to all intents and purposes whatsoever, as fully and effectually as if every person having any estate in the premises, in possession, remainder, reversion, or expectancy, or any charge, encumbrance, or lien thereon, was of full age and of sound mind and memory, and had actually and duly conveyed the same to such trustee by lease and release, bargain and sale enrolled, feoffment with livery and seisin, fine and recovery, or by any other legal conveyance whatsoever. 4 G.4. c.64.

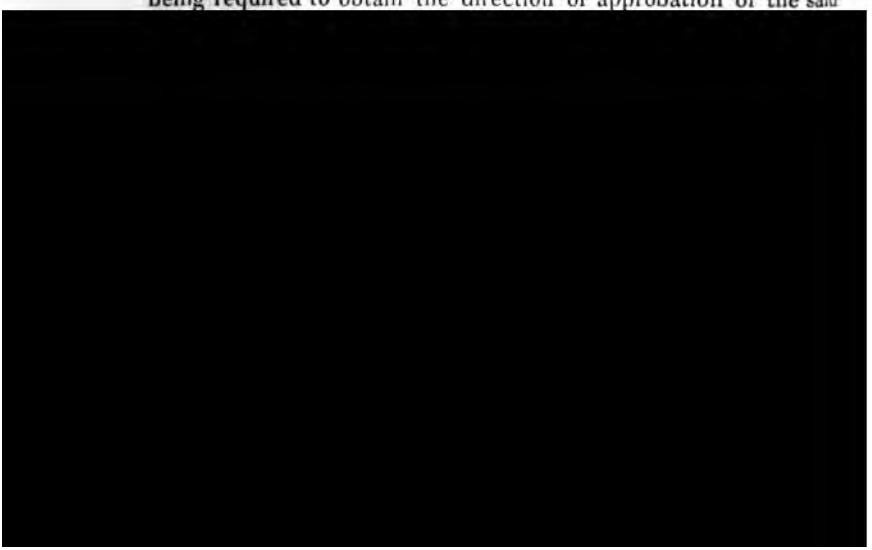
§ 62. If any money shall be agreed or awarded to be paid for any houses, buildings, lands, tenements, hereditaments, easements, or privileges, purchased, taken, or used by virtue of the powers of this act, which shall belong to any corporation, feme covert, infant, lunatic, person or persons under any other disability or incapacity, such money shall, in case the same shall amount to the sum of 200*l.*, with all convenient speed be paid into the bank of *England*, in the name and with the privity of the accountant-general of the high court of chancery, to be placed to his account, *ex parte* the justices of the peace for the county of ——, to the intent that such money shall be applied under the direction and with the approbation of the said court, to be signified by an order made upon a petition to be preferred in a summary way by the person or persons who would have been entitled to the rents and profits of the said houses, buildings, lands, tenements, hereditaments, easements, or privileges in the purchase of the land-tax, or discharge of any debt or debts, or such other incumbrances, or part thereof, as the said court shall authorise to be paid, affecting the said lands, tenements, or hereditaments, or affecting other houses, buildings, lands, tenements, hereditaments, easements, or privileges standing settled therewith to the same or the like uses, intents, and purposes; or where such money shall not be so employed, then the same shall be laid out and invested, under the like direction and approbation of the said court, in the purchase of other houses, buildings, lands, tenements, hereditaments, easements, or privileges, which shall be conveyed and settled to, for, and upon such and the like uses, trusts, intents, and purposes, and in the same manner as the houses, buildings, lands, tenements, hereditaments, easements, or privileges, which shall be so purchased, taken, or used as aforesaid, stood settled or limited, or such of them as at the time of making such conveyance and settlement shall be existing undetermined and capable of taking effect; and in the mean time and until such purchase shall be made, the said money shall by order of the court of chancery, upon application thereto, be invested by the said accountant-general in his name, in the pur- Application of compensation when exceeding 200*l.*

1 G. 4. c. 64.

chase of three pounds *per centum* consolidated, or three pounds *per centum* reduced bank annuities; and in the mean time, and until the said bank annuities shall be ordered by the said court to be sold for the purposes aforesaid, the dividends and annual produce of the said consolidated or reduced bank annuities shall, from time to time, be paid by order of the said court to the person or persons who would, for the time being, have been entitled to the rents and profits of the houses, buildings, lands, tenements, hereditaments, easements, or privileges so hereby directed to be purchased, in case such purchase or settlement were made.

Application when the compensation is less than 200*l.* but not less than 20*l.*

§ 63. Provided always, that if any money so agreed or awarded to be paid for any houses, buildings, lands, tenements, hereditaments, easements, or privileges, purchased, taken, or used for the purposes aforesaid, and belonging to any corporation, or to any person or persons under disability or incapacity as aforesaid, shall be less than the sum of 200*l.*, and shall amount to or exceed the sum of 20*l.*, then and in all such cases the same shall, at the option of the person or persons for the time being entitled to the rents and profits of the houses, buildings, lands, tenements, hereditaments, easements, or privileges so purchased, taken, or used, or of his, her, or their guardian or guardians, committee or committees, in case of infancy or lunacy, to be signified in writing under their respective hands, be paid into the bank of *England*, in the name and with the privity of the said accountant-general of the high court of chancery, and be placed to his account as aforesaid, in order to be applied in manner hereinbefore directed; or otherwise the same shall be paid, at the like option, to two trustees, to be nominated by the person or persons making such option, and approved of by the said justices, (such nomination and approbation to be signified in writing under the hands of the nominating and approving parties,) in order that such principal money, and the dividends arising thereon, may be applied in manner hereinbefore directed, so far as the case be applicable, without obtaining or being required to obtain the direction or approbation of the said



leges, be not known or discovered; then and in every such case it shall and may be lawful to and for the said justices to order the said sum or sums of money so awarded as aforesaid to be paid into the bank of *England*, in the name and with the privity of the accountant-general of the court of chancery, to be placed to his account to the credit of the persons interested in the said houses, buildings, lands, tenements, hereditaments, easements, or privileges (describing them), subject to the order, control, and disposition of the said court of chancery; which said court of chancery, on the application of any person or persons making claim to such sum and sums of money, or any part thereof, by motion or petition, shall be and is hereby empowered, in a summary way of proceeding or otherwise, as to the same court shall seem meet, to order the same to be laid out and invested in the public funds, and to order the distribution thereof, or payment of the dividends thereof, according to the respective estate or estates, title or interest, of the person or persons making claim thereunto, and to make such other order in the premises as to the said court shall seem just and reasonable; and the cashier or cashiers of the bank of *England*, who shall receive such sum or sums of money, is and are hereby required to give a receipt for such sum or sums of money, mentioning and specifying for what and for whose use the same is or are received, to such person or persons who shall pay any such sum or sums of money into the bank as aforesaid. 4 G. 4. c. 64.

§ 66. Provided always, that where any question shall arise touching the title of any person to any money to be paid into the bank of *England* in the name and with the privity of the accountant-general of the court of chancery, in pursuance of this act, for the purchase of any houses, buildings, lands, tenements, hereditaments, easements, or privileges, or of any estate, right, or interest in any houses, buildings, lands, tenements, hereditaments, easements, or privileges to be purchased in pursuance of this act, or to any bank annuities to be purchased with any such money, or the dividends or interest of any bank annuities, the person or persons who shall have been in possession of such houses, buildings, lands, tenements, hereditaments, easements, or privileges, at the time of such purchase, and all persons claiming under such person or persons, shall be deemed and taken to have been lawfully entitled to such houses, buildings, lands, tenements, hereditaments, easements, or privileges, according to such possession, until the contrary shall be shown to the satisfaction of the said court of chancery; and the dividends or interest of the said bank annuities to be purchased with such money, and also the capital of such bank annuities, shall be paid, applied, and disposed of accordingly, unless it shall be made appear to the said court that such possession was a wrongful possession, and that some other person or persons was or were lawfully entitled to such houses, buildings, lands, tenements, hereditaments, easements, or privileges, or to some estate or interest therein. When any question shall arise touching the title to the money paid into the bank.

§ 67. Provided also, that where by reason of any disability or incapacity of the person or persons or corporations entitled to any houses, buildings, lands, tenements, hereditaments, easements, or privileges to be purchased under the authority of this act, the purchase-money for the same shall be required to be paid into the The court of chancery may order reasonable expenses of purchases to be paid.

4 G.4. c.64.

court of chancery, and to be applied in the purchase of other houses, buildings, lands, tenements, hereditaments, easements, or privileges, to be settled to the like uses in pursuance of this act, it shall and may be lawful to and for the said court of chancery to order the expenses of such last-mentioned purchases from time to time to be made in pursuance of this act, or so much thereof as the said court shall deem reasonable, to be paid by the said justices, out of any monies to be received for the purposes of this act, who shall from time to time pay such sums of money for such purposes as the said court shall direct.

5 G.4. c.85. Regulating the notices when commonable lands are required for a prison.

By stat. 5 *G.* 4. *c.* 85. § 18. Reciting "whereas it may be found expedient in some places, for the purpose of building, enlarging, or rendering more commodious the gaol or house of correction, to fix upon lands or tenements over which rights of common exist; and in such case great difficulties may arise in purchasing and obtaining a conveyance of such commonable lands or tenements under the general powers of stat. 4 *G.* 4. *c.* 64.; it is therefore enacted, that for the purpose of the said recited act and of this act, and of any local act relative to any such gaol or house of correction, the churchwardens for the time being of the parish wherein any such commonable lands or tenements shall be situate, shall be considered as the persons solely and absolutely entitled to the rights of common, of pasture, or other commonable rights to which any such lands or tenements shall be subject; and that the monies for which any such commonable rights shall be purchased shall be paid to such churchwardens, whose receipts shall be an effectual discharge for the same; and the same monies shall be applied by such churchwardens to such general and public purposes within the parish where the lands or tenements so purchased shall be situate, as a vestry of such parish, to be convened by such churchwardens, shall direct."

Notices to be delivered to the occupier.

§ 19. Enacts, "that for the purpose of receiving the notice required by stat. 4 *G.* 4. *c.* 64. to be given to persons interested in houses, buildings, lands, tenements, hereditaments, easements,

peace there assembled shall proceed in carrying this act into effect; and such justices shall, by orders to be made for that purpose, ascertain and declare to what class or classes of prisoners every such goal, house, or houses of correction, or any part or parts of any of them respectively, shall be applicable; and every such order shall be signed by the chairman of such sessions, and shall be notified by the clerks of the peace to the several justices of the peace in every such county, riding, or division, district, city, town, or place respectively; and notice thereof shall be inserted in three of the newspapers usually circulated in such county, riding, or division, or district, city, town, or place respectively, within three weeks after any such order shall be made at any such sessions; and a copy thereof shall be served upon the keeper of every gaol or house of correction within every such county, riding, division, city, district, town, or place; and after the making of such order, and service of such copy thereof upon such keeper as aforesaid, such class or classes of prisoners as shall be specified in such order, and no other, shall be committed to or detained in any such gaol, house or houses of correction, or any part of any of them respectively; and all persons not coming within the class or description of prisoners who may lawfully be committed to or detained in such prison as shall be appointed by the justices for the confinement of one or more class or classes of prisoners, may be removed to the gaol or house of correction of the county, riding, or division; and every such gaol or house of correction shall be deemed the legal gaol, prison, or place of confinement of every person respectively committed to the same in pursuance of such order as aforesaid; any thing in any act or acts, or any law, custom, or usage to the contrary notwithstanding: Provided always, that no classification of prisoners shall be made in any house of correction appropriated to the reception of any particular class or classes of prisoners, which shall be in any way inconsistent with or contrary to the classification directed by this act.

and shall ascertain the classes to be confined in the several prisons.

Notice of the order of sessions to be given, and a copy served on the keeper of every gaol, &c.

No classification to be made in any house of correction contrary to this act.

By § 5. It is enacted, that where in any county, riding, or division of a county, or in any of the cities, towns, and places named in the said Sched. (A), any house of correction shall be part of the same building, or enclosed in the same boundary-wall as, or shall be contiguous to, the common gaol, and shall be under the superintendence of the same keeper, and the same visiting justices, it shall be lawful for the justices of the peace of the county, division, city, town, or place, assembled at any general or quarter sessions, from time to time, with the consent of the sheriff of the county for the time being, signified in writing under his hand, to proceed to carry into effect the classification and separation directed by this act in the whole of such united or contiguous building or buildings, instead of in each such house of correction and gaol, and to divide the whole of such building, or united or contiguous buildings, into such number of compartments for the purpose of such separation and classification as would be required under the regulations of this act, if the same had been one distinct gaol or house of correction; and also at any general or quarter sessions from time to time, by their order or orders, and with such consent of the sheriff as aforesaid, to ascertain and declare what part or parts of the same building, or united or conti-

Where house of correction and gaol are parts of the same building, or enclosed in the same boundary-wall, and under the same keeper and visiting justices, the classification in the whole of such buildings, and not in each part separately required by this act, shall be carried into effect.

4 G. 4. c. 64.

guous buildings, shall be considered as the gaol, and what part or parts thereof respectively shall be considered the house of correction, and shall be appropriated to the confinement of particular classes and descriptions of prisoners, and to direct what classes and descriptions respectively shall be confined in each part or division of such building, or united or contiguous buildings; and all persons to be committed to or detained in the respective parts and divisions so to be ascertained and appropriated of any such building, or united or contiguous buildings, to them respectively applicable, shall be deemed and held to be in legal custody: Provided that prisoners for debt may be removed to and shall always be confined in the part or parts of such building, or united or contiguous buildings, which shall be so ascertained or be appropriated as and for the gaol of the county, division, city, town, or place; and such removal shall not be deemed or taken to be an escape.

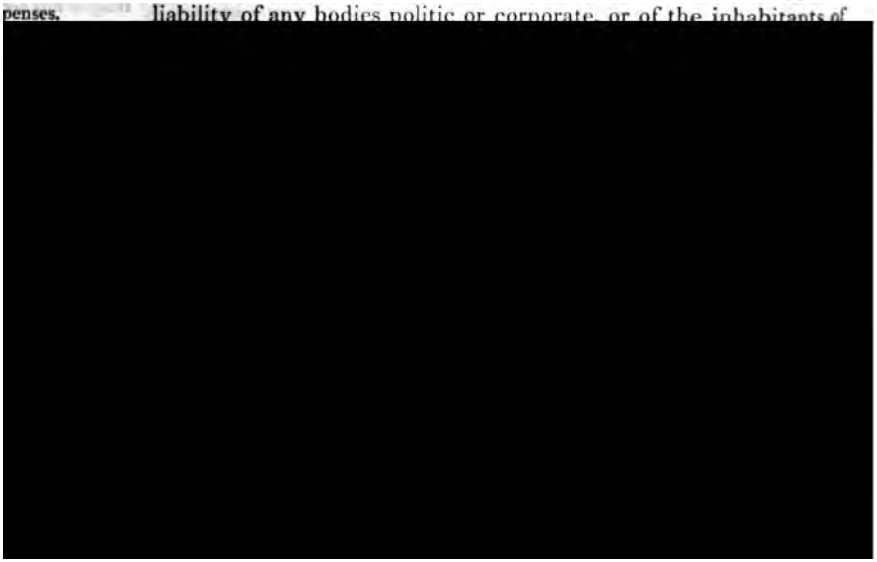
Prisoners for debt to be confined in that part of the building appropriated for the gaol.

5 G. 4. c. 85. Where gaol and house of correction are contiguous, the chapel and infirmary may be common to both.

Stat. 5 G. 4. c. 85. § 14. Reciting whereas by stat. 4 G. 4. c. 64. it is required, that when the gaol and house of correction are enclosed within the same boundary-wall, it shall be ascertained and declared what part or parts shall be considered as the gaol, and what as the house of correction; enacts, that notwithstanding any thing in the said act contained it may be lawful for the justices, in their general or quarter sessions, to declare in any such case that such parts of the buildings as shall be appropriated for the chapel, and for the sick-wards or infirmaries, shall be common both to the gaol and to the house of correction, and that in that case a double set of wards shall not be necessary.

The liability of cities is not to be altered, as to the description of prisoners, or the contribution towards expenses.

§ 15. Enacts, that nothing in the said recited act or in this act contained shall oblige any city, town, borough, port, or liberty, to provide in its gaol or house of correction accommodation for any class of prisoners who could not be lawfully committed to such prison before the passing of the said recited act; and that nothing in the said recited act or this act contained shall alter or affect the liability of any bodies politic or corporate, or of the inhabitants of



conveyed and sent away or discharged, and be subject and liable to the same correction and punishment, to all intents and purposes, as if committed by any justice or justices of the peace of such county, riding, or division; and in such case it shall not be necessary or required that any other house of correction shall be built or maintained in or for such district, city, town, or place, and the inhabitants of such district, city, town or place shall not be compelled or compellable to the payment of any rate or sum of money whatever for the building or maintaining of any other house of correction in or for such district, city, town, or place. 4 G. 4. c. 64. Not necessary to build a house of correction for any such district, &c.

X. Benefactions and Gifts, how to be applied and examined into.

[4 G. 4. c. 64. § 35, 36.]

By stat. 4 *G.* 4. *c.* 64. § 35. After reciting, that whereas provision is made in this act for supplying poor prisoners with food and clothing; and whereas bequests have been made, and benefactions have been given, for supplying such poor criminal prisoners with these necessaries; it is enacted, that it shall be lawful for the justices in general or quarter sessions assembled, to apply such bequests or benefactions for the benefit of such poor prisoners, either by providing them with the implements of labour, or with the means of returning to their own homes, or in such manner as to the magistrates may appear expedient. 4 G. 4. c. 64. In what manner bequests and benefactions may be applied.

§ 36. The chief justices of the courts of K. B. and C. P. and the chief baron of the court of exchequer, or any one of them, together with the lord mayor and two of the aldermen, or with three of the aldermen of the city of *London*, for and in respect of the gaols and prisons within the city of *London* and the liberties thereof, and the said chief justices or chief baron, or any one of them, with three justices of the peace of the counties of *Middlesex* and *Surrey* respectively, for and in respect of the gaols and prisons in the counties of *Middlesex* and *Surrey*, and the justices of gaol-delivery and great sessions, and the justices of peace of every other county, riding, and division of a county, at any general or quarter session of the peace to be holden for such county, riding, or division respectively, in their respective jurisdictions, and all commissioners for charitable uses, shall do their best endeavours and diligence to examine and discover the several gifts, legacies, and bequests bestowed and given for the benefit and advantages of the poor prisoners in the several gaols and prisons to which this act shall extend, and to send for any deeds, wills, writings, and books of account whatsoever, and any persons concerned therein, and to examine them upon oath to make true discovery thereof, (and which such chief justices, chief barons, justices of gaol-delivery and great sessions, mayor, aldermen, and justices of the peace, have hereby full power and authority to do,) and to order and settle the payment, recovery, and receipt of all such gifts, legacies, and bequests, when so discovered and ascertained, in such easy and expeditious manner, that the prisoners for the future may not be defrauded, but receive the full benefit thereof, according to the true intent of the donors, or the provisions of this act; and that lists or tables of such gifts, lega- Chief justices, &c. to examine into gifts for prisoners.

4 G.4. c.64.

Lists of gifts to be registered by the clerks of the peace, and hung up in gaols.

cies, and bequests, for the benefit of the prisoners in every gaol or prison respectively, fairly written, shall be registered by the clerks of the peace of the respective counties and places in the rolls of their respective sessions, without fee or reward, and copies thereof shall be hung up in such gaols and prisons respectively, in some open room or place to which the prisoners may have resort as occasion shall require.

XI. Rules and Regulations to be observed in all Prisons.

[4 G. 4. c. 64. § 10, 11, 12, 13. 15.]

4 G.4. c.64. Rules and regulations to be observed in all gaols.

By stat. 4 *G.* 4. *c.* 64. § 10. After reciting, that whereas it is fit and proper to secure an uniformity of practice in the management of the several prisons to which this act shall extend; it is enacted, that the following rules and regulations shall be observed, and carried into effect in every such prison in *England* and *Wales*, which shall be maintained by any county or riding, or division of a county as aforesaid, as a gaol or house of correction, and in the gaol and house of correction of every district, city, town, or place mentioned in the schedule marked (A) annexed to this act, and in every united and contiguous gaol and house of correction which shall be jointly used in manner aforesaid for the purposes of this act, and in every prison authorised to be continued under this act as aforesaid, in any county or riding, or division of a county, so far as such rules may be applicable or can be applied to the particular description or class of prisoners confined in such prison: —

Keeper.

1st. The keeper of every such prison shall reside therein; he shall not be an under-sheriff or bailiff, nor shall be concerned in any occupation or trade whatsoever; no keeper or officer of a prison shall sell, nor shall any person in trust for him or employed by him sell, or have any benefit or advantage from the sale of any

4 G. 4. c. 64.

5th. Due provision shall be made in every prison for the enforcement of hard labour in the cases of such prisoners as may be sentenced thereto, and for the employment of other prisoners. The means of hard labour shall be provided, and the materials requisite for the employment of prisoners shall be purchased, under such regulations as may be made for that purpose by the justices in general or quarter sessions assembled. If the work to be performed by the prisoners be of such a nature as to require previous instruction, proper persons shall be appointed to afford the same.

Hard labour.

6th. The male and female prisoners shall be confined in separate buildings or parts of the prison, so as to prevent them from seeing, conversing, or holding any intercourse with each other; and the prisoners of each sex shall be divided into distinct classes, care being taken that the prisoners of the following classes do not intermix with each other: —

Separation of males and females.

In Gaols.

1st. Debtors and persons confined for contempt of court on civil process.

2d. Prisoners convicted of felony.

3d. Prisoners convicted of misdemeanors.

4th. Prisoners committed on charge or suspicion of felony.

5th. Prisoners committed on charge or suspicion of misdemeanors, or for want of sureties.

In Houses of Correction.

1st. Prisoners convicted of felony.

2d. Prisoners convicted of misdemeanors.

3d. Prisoners committed on charge or suspicion of felony.

4th. Prisoners committed on charge or suspicion of misdemeanors.

5th. Vagrants.

Such prisoners as are intended to be examined as witnesses in behalf of the crown in any prosecution shall also be kept separate in all gaols and houses of correction: Provided always, that nothing herein contained shall be construed to extend to prevent the justices from authorising, at their discretion, the employment of any prisoner in the performance of any menial office within the prison, or for the purpose of instructing others; and provided also, that if the keeper shall at any time deem it improper or inexpedient for a prisoner to associate with the other prisoners of the class to which he or she may belong, it shall be lawful for him to confine such prisoner with any other class or description of prisoners, or in any other part of the prison, until he can receive the directions of a visiting justice thereon, to whom he shall apply with as little delay as possible, and who in every such instance shall ascertain whether the reasons assigned by the keeper warrant such deviation from the established rules, and shall give such orders in writing as he shall think fit, under the circumstances of the particular case.

Justices may authorise the employment of prisoners in menial offices.

Power to the keeper to confine a prisoner with another class till he receives the directions of a visiting justice.

7th. Female prisoners shall in all cases be attended by female officers.

8th. Every prisoner sentenced to hard labour shall, unless prevented by sickness, be employed so many hours in every day, not exceeding ten, exclusive of the time allowed for meals, as

Hours of hard labour.

4 G.4. c.64.

shall be directed by the rules and regulations to be made under this act, except on *Sundays*, *Christmas Day*, and *Good Friday*, and on any days appointed by public authority for fasting or thanksgiving.

Daily prayer.

9th. Prayers, to be selected from the liturgy of the church of *England* by the chaplain, shall be read at least every morning by the chaplain, the keeper, or by some other person, as by the rules and regulations shall be directed; and portions of the Scriptures shall be read to the prisoners, when assembled for instruction, by the chaplain, or by such person as he may appoint or authorise.

Instruction.

10th. Provision shall be made in all prisons for the instruction of prisoners of both sexes in reading and writing, and that instruction shall be afforded under such rules and regulations, and to such extent, and to such prisoners, as to the visiting justices may seem expedient.

Divine service.

11th. Prisoners under charge or conviction of any crime shall attend divine service on *Sundays*, and on other days when such service is performed, unless prevented by illness or by other reasonable cause, to be allowed by the keeper, or unless their attendance shall be dispensed with by one of the visiting justices.

Prisoners not to be ironed, except in case of necessity.

12th. No prisoner shall be put in irons by the keeper of any prison, except in case of urgent and absolute necessity; and the particulars of every such case shall be forthwith entered in the keeper's journal, and notice forthwith given thereof to one of the visiting justices; and the keeper shall not continue the use of irons on any prisoner longer than four days, without an order in writing from a visiting justice, specifying the cause thereof; which order shall be preserved by the keeper, as his warrant for the same. (*a*)

Food.

13th. Every prisoner maintained at the expense of any county, riding, division, city, town, or place, shall be allowed a sufficient quantity of plain and wholesome food, to be regulated by the justices in general or quarter sessions assembled, regard being had

[redacted]

as the said justices shall from time to time think necessary for the support of health. Prisoners under the care of the surgeon shall be allowed such diet as he may direct. Care shall be taken that all provisions supplied to the prisoners be of proper quality and weight. Scales and legal weights and measures shall be provided, open to the use of any prisoners, under such restrictions as shall be made by the regulations of each prison. See *R.* v. *Justs. of N. R. Yorkshire, M.* 1823. 2 *B. & C.* 286. *post.* 4 G.4. c. 64.

14th. Prisoners who shall not receive any allowance from the county, whether confined for debt or before trial, for any supposed crime or offence, shall be allowed to procure for themselves, and to receive at proper hours, any food, bedding, clothing, or other necessaries, subject to a strict examination, and under such limitations and restrictions, to be prescribed by the regulations to be made in manner directed by this act, as may be reasonable and expedient, to prevent extravagance and luxury within the walls of a prison; all articles of clothing and bedding shall be examined, in order that it may be ascertained that such articles are not likely to communicate infection or facilitate escape. Restriction as to procuring food, &c.

15th. No prisoner who is confined under the sentence of any court, nor any prisoners confined in pursuance of any conviction before a justice, shall receive any food, clothing, or necessaries, other than the gaol allowance, except under such regulations and restrictions as to the justices in general or quarter sessions assembled may appear expedient, with reference to the several classes of prisoners, or under special circumstances, to be judged of by one or more of the visiting justices. (*a*)

(*a*) By stat. 53 *G.*3. *c.*21. The commissioners of customs or excise, or any four of them in *England*, and three of them in *Scotland*, may cause an allowance to be made for the necessary subsistence of poor prisoners in gaol under any exchequer process, or commitment in execution by any commissioner or justices of the peace, or under any writ of extent, or suit upon bond pursuant to orders in council, of a sum not exceeding 7½*d.* and not less than 4½*d. per* day, out of any monies in their hands respectively. See tit. Excise and Customs, *ante*. See also stat. 52 *G.*3. *c.*160. Vol. IV. Poor, § III. 4. 53 G.3. c.21. Allowance to poor persons confined under exchequer process, &c.

In regard to the great power which gaolers and their officers have, and, while it is exercised with moderation, ought to have, over their prisoners, the law watcheth with a jealous eye over *their* conduct; and, therefore, if a prisoner under their care dieth, whether by disease or accident, the coroner, upon notice of such death, which notice the gaoler is obliged to give in due time, ought to resort to the gaol, and there, upon view of the body, make inquisition into the cause of his death; and if the death was owing to cruel and oppressive usage on the part of the gaoler or any officer of his, or, to speak in the language of the law, *to duress of imprisonment*, it will be deemed wilful murder in the person guilty of such duress. I say *the person guilty of the duress*, because though in a civil suit the principal may, in some cases, be answerable in damages to the party injured through the default of the deputy upon the *respondeat superior*; yet in a capital prosecution, the sole object of which is the punishment of the delinquent, each man must answer for his own acts or defaults. *Fost.* 321. 1 *Hale*, 432. 2 *Hale*, 57. 1 *East's P.C.* 331. 1 *Russ.* 667. Prisoners dying in gaol. See Rule 24. and § II. p. 677.

The instances of oppression which may fall within the rule of duress of imprisonment, are as various as a heart cruelly bent upon mischief can invent. I will mention two which have lately come in judgment. A gaoler, knowing that a prisoner infected with the small-pox lodged in a certain room in the prison, confined another prisoner, *against his will*, in the same room. The second prisoner, who had not had the distemper, *of which the gaoler had notice*, caught the distemper and died of it. This was very rightly holden to be murder in the gaoler. *Fost.* 322. *Case of Bainbridge & Corbett*, 17 *How. St. Tri.* 398. 2 *Str.* 856. 1 *East's P.C.* 331.

4 G. 4. c. 64.

16th. Due provision shall be made for the admission, at proper times, and under proper restrictions, of persons with whom prisoners commited for trial may desire to communicate; and such rules and regulations shall be made, by the justices in general quarter sessions assembled, for the admission of the friends of convicted prisoners, as to such justices may seem expedient; and the justices shall also impose such restrictions upon the communication and correspondence of all such prisoners with their friends either within or without the walls of the prison, as they shall judge necessary for the maintenance of good order and discipline in such prison.

17th. The surgeon shall examine every prisoner who shall be brought into the prison, before he or she shall be passed into the proper ward; and no prisoner shall be discharged from prison if labouring under any acute or dangerous distemper, nor until, in the opinion of the surgeon, such discharge is safe, unless such prisoner shall require to be discharged. The wearing apparel of every prisoner shall be fumigated and purified, if requisite, after which the same shall be returned to him or her, or in case of the insufficiency of such clothing, then other sufficient clothing shall be furnished, according to the rules and regulations of the prison; but no prisoner, before trial, shall be compelled to wear a prison-dress, unless his or her own clothes be deemed insufficient or improper, or necessary to be preserved for the purposes of justice; and no prisoner who has not been convicted of felony shall be liable to be clothed in a party-coloured dress; but if it be deemed expedient to have a prison-dress for prisoners not convicted of felony, the same shall be plain.

18th. Every prisoner shall be provided with suitable bedding; and every male prisoner with a separate bed, hammock, or cot, either in a separate cell, or in a cell with not less than two other male prisoners.

19th. The walls and ceilings of the wards, cells, rooms, and par-

use of any prisoners, except in such quantities, in such manner, and at such times, as shall be allowed by the rules hereafter to be made in pursuance of this act. 4 G.4. c.64.

22d. No gaming shall be permitted in any prison; and the keeper shall seize and destroy all dice, cards, or other instruments of gaming.

23d. No money under the name of garnish shall be taken from any prisoner on his or her entrance into the prison, under any pretence whatever.

24th. Upon the death of a prisoner, notice thereof shall be given by the keeper forthwith to one of the visiting justices, as well as to the coroner of the district, and to the nearest relative of the deceased, where practicable.

No prisoner to sit on an inquest.

§ 11. In case the coroner shall hold an inquest on the body of any prisoner who shall have died within the prison, none of the prisoners confined in that prison shall be a juror on such inquest.

Court of mayor and aldermen, so far as respects city prisons, and five justices in sessions, may make further regulations for prisons. In London and Middlesex rules to be submitted to the two chief justices, and elsewhere to the justices of gaol-delivery, &c.

§ 12. It shall be lawful for the court of mayor and aldermen of the city of *London*, so far as respects the prisons within the said city and liberties thereof, and for five justices of the peace in general or quarter sessions assembled, of each county, riding, or division of a county, or of any district, city, town, or place to which this act shall extend, so far as respects the prisons within their respective jurisdictions, to make such further and additional rules for the government of such prisons respectively, and for the duties to be performed by the officers of the same, as to them may seem expedient: Provided, that no such further or additional rules shall be enforced, until the same shall have been submitted, in *London* and *Middlesex*, to the two chief justices, and elsewhere to the justices of gaol-delivery or of great sessions respectively, at some gaol delivery or great sessions to be held after the making such rules, and until such chief justice or justices of gaol-delivery or of great sessions respectively shall have subscribed a certificate or declaration that they do not see any thing contrary to law therein: Provided always, that all such rules and regulations shall be consistent with and conformable to the rules and regulations in this act contained; and the justices in general or quarter sessions assembled shall, and they are hereby required, from time to time, to cause copies of so much of the rules of each prison as relates to the treatment and conduct of prisoners confined therein, to be printed in legible characters, and to be fixed up in conspicuous parts of every prison, so that every prisoner may be enabled to have access thereto; and all rules and regulations made and approved pursuant to the directions of this act, shall be binding upon the sheriff and upon all other persons: Provided, that no such rules shall be so construed as to interfere with the right or duty of the sheriff to appoint or remove any keeper of a county gaol, or other prison subject to the authority of such sheriff.

Copies of rules to be put up in prisons.

Rules shall bind sheriffs, except as to appointment of gaolers.

Powers of general or quarter sessions to be exercised in London by the court of mayor and aldermen, as heretofore, &c.

§ 13. Provided always, that all the powers and authorities given by this act to justices of the peace in general or quarter sessions assembled, in the several counties, and all other acts to be done and performed by justices of the peace at any sessions in pursuance of this act, shall be exercised and performed, so far as regards the prisons in the city of *London* and liberties thereof, by the court of mayor and aldermen of the said city, as heretofore has been accustomed, and not by the said mayor and aldermen as magis-

4 G.4. c.64.

trates at the general or quarter sessions of the peace to be holden in and for the said city; any thing in this act contained to the contrary thereof in anywise notwithstanding.

Copies of proceedings and regulations of justices, and plans of prisons to be transmitted to secretary of state.

§ 15. The chairman of the *Michaelmas* quarter sessions of the peace, which shall be held next after the commencement of this act, for every county, riding, division, district, city, town, or place to which this act shall extend, shall transmit, within 14 days after the termination of such session, to one of H. M.'s principal secretaries of state, a true and correct account of their proceedings at such sessions for carrying this act into effect, and also a copy of all such rules and regulations as shall be then in force for the government of every prison within the jurisdiction of the justices assembled at such sessions, and shall also transmit at the same time, or within three months afterwards, to such secretary of state, plans of all such prisons, drawn upon a scale of one sixteenth of an inch to a foot; and the said copies and plans shall be carefully preserved in the office of such secretary of state; and the chairman of every succeeding *Michaelmas* quarter sessions shall transmit, within 14 days after the termination of such *Michaelmas* quarter sessions, a true and correct copy of all such additions to such rules and regulations, or alterations made therein, as shall have been duly sanctioned since the preceding *Michaelmas* quarter sessions, together with plans, on the scale above mentioned, of any additions to the buildings of such prison, or alterations made in the construction thereof, during the same period.

55 G.3. c.50. All fees or gratuities payable at gaols and bridewells shall be abolished.

By stat. *55 G. 3. c.50.*, intituled *An act for the abolition of gaol and other fees, connected with the gaols in* England, after reciting that it is expedient, for the better government of gaols and bridewells in *England*, that all fees and gratuities payable at the same, for the entrance, commitment, or discharge of any prisoner, should be abolished; it is enacted, that, from and after the 1st day of *October*, 1815, all fees and gratuities paid or payable by any prisoner, on the entrance, commitment, or discharge to or from

the grand jury, or who, on his, her, or their trial, shall be acquitted, or who shall be discharged by proclamation, for want of prosecution, shall be immediately set at large, without payment of any fee or sum of money, for or in respect of his, her, or their discharge, to any person or persons whomsoever; except only in such cases wherein the prisoner shall have been charged, and shall then stand charged with any process authorising the detention of such prisoner: Provided always, that if it shall happen that any prisoner who shall so stand charged with any process authorising his detention as aforesaid, shall have been discharged in supposed obedience to this act, by reason that the sheriff or other officer entitled to have detained him was at the time of such his discharge ignorant that there was any such charge against him, it shall, in such case, be lawful for such sheriff or other officer, on receiving information of such charge, presently to retake the prisoner so discharged as aforesaid, and thereupon forthwith to detain him in custody upon such charge, in such manner as the said sheriff or other officer might have done if such prisoner had not been set at large; and that upon his being so retaken, the said prisoner shall be deemed for the purpose of that suit to have been in custody continually from the time when he so first stood charged as aforesaid." *55 G.3. c.50.*

All fees usually paid to clerks of the court, assizes, &c. to be abolished.

§ 5. All such fees as have been usually paid or payable to the several clerks of assize and clerks of the peace, clerks of the court, or their deputies, in that part of the U. K. of *G. B.* and *Ireland* called *England*, in any of the cases aforesaid, shall absolutely cease, and the same are hereby abolished and determined; and from and after the passing of this act, no clerk of assize, clerk of the peace, clerk of the court, or their deputies, shall ask, demand, take, or receive any sum or sums of money, from any of the said prisoners as fees, for or in respect of his, her, or their discharge.

County treasurers to pay allowances for places not usually assessed to the county at large.

§ 6. In lieu and satisfaction of such lawful fees so abolished as aforesaid, the treasurers or other proper officers of the several counties in *England*, or of such districts, hundreds, ridings, or divisions of a county as are not usually assessed to the county at large, and of such cities, towns corporate, cinque ports, liberties, franchises, and places, as do not pay to the rates of the several counties in which they are respectively situated, shall, on receiving a certificate signed by one or more judge or justice of the peace, before whom such prisoner shall have been discharged as aforesaid, (which certificate the judge or justice is hereby required to give,) pay out of the rates of such county, or of such district, hundred, riding, or division, or out of the public stock of such city, town corporate, cinque port, liberty, franchise, or place, such lawful sum as has been usually paid upon that occasion, for every prisoner discharged as aforesaid, to such clerk of assize, clerk of the peace, or clerk of the court, or their respective deputies; which several sums so paid in pursuance of this act shall be respectively allowed to the said treasurer and officers, by the justices before whom their accounts shall be passed.

Indemnification for fees to clerks of the peace.

§ 7. Every clerk of the peace, or his or their deputy or deputies, and all and every officer who shall claim any fees or indemnification for the same, by virtue of any of the provisions hereinbefore contained, for and in respect of any such prisoners, shall deliver at each and every session of the peace, or at some adjourn-

55 G. 3. c. 50.

ment thereof, an account of all fees so due to him, or for which he shall claim any indemnification; which account shall be verified upon oath in court, before the chairman of such sessions.

Clerks of assize to deliver an account of fees.

§ 8. The clerks of assize shall, at each and every assize to be holden, deliver in to the judge of the assize who shall sit for the trial of such prisoners, an account of such fees as shall be due to him, for and in respect of such prisoners; which account shall be verified upon oath before such judge to whom such account shall be delivered.

Punishment of officers for exacting fees in future.

§ 9. Any clerk of assize, clerk of the peace, clerk of the court, or their deputies or other officers, exacting such fees, shall be rendered incapable of holding his or their offices, and be guilty of a misdemeanor.

Liberates to debtors to be granted free of expense, and compensation made to sheriffs for the same.

§ 10. And whereas it has been customary in some places for the sheriff or under-sheriff to demand, for the liberate granted to any debtor on his discharge, a fee or gratuity; it is enacted, that such liberate shall be granted to such debtor free of all expenses; and that it shall be in the power of the justices of the peace for each county, city or town, assembled in quarter session, subject however to the approbation of the judges of assize, to make such compensation to the sheriff or under-sheriff, out of the county, city or town rate, as shall to them seem fit.

How allowances shall be raised for places which do not contribute to county rates.

§ 11. And whereas there are several cities, towns corporate and places within this kingdom, which do not contribute to the payment of any county rate, and have no town rate or public stock; and doubts may arise whether such cities, towns corporate and places can be legally rated and assessed towards the payment of the salaries, allowances, and compensations, in lieu of such fees and gratuities; be it enacted, that in all such cases the salaries, allowances, and compensations, in lieu of fees and gratuities hereinbefore directed to be made, shall be raised, levied, collected, and paid within such cities, towns corporate and places, by a separate rate and assessment to be made by the churchwardens and overseers of the poor of the several parishes and precincts within such

ordered to be paid by the said judge or judges, or justices, of the said last-mentioned monies, when and as often as the same shall be so ordered: Provided always, that the order for such allowances as may be made by the justices of the peace assembled in general or quarter sessions, be approved by the judge or judges of assize on the first circuit ensuing after such warrant shall have been made out by the justices of peace assembled in general or quarter sessions for any county, city, or town, and that such order shall not be deemed or taken as a legal order without such warrant from the judge or judges of assize: Provided always, that should there be more parishes than one in the same district, the payments are to be made and levied in such rates and proportions as the respective parishes pay to the poor's rate. *55 G.3. c.50.*

§ 13. Any gaoler, who shall from and after the 1st day of *October*, 1815, exact from any prisoner any fee or gratuity for or on account of the entrance, commitment, or discharge of such prisoner, or who shall detain any prisoner in custody for non-payment of any fee or gratuity, shall be rendered incapable of holding his office, be guilty of a misdemeanor, and be punished by fine and imprisonment. **Punishment of gaolers for exacting any fee or gratuity from prisoners.**

§ 14. Provided always, that nothing in this act contained shall be construed to extend to the *King's Bench* prison, H. M.'s prison of the *Fleet*, the *Marshalsea* and *Palace* courts. **Not to extend to certain gaols.**

And by stat. *56 G. 3. c. 116.* after reciting stat. *55 G. 3. c. 50.*, and that doubts had arisen whether the judges of assize had power by virtue of the said act to grant to certain officers who before the passing thereof were entitled to certain fees abolished by the said act, a certificate for the purpose of enabling the said officers to receive compensation for such fees so abolished; it is therefore declared and enacted, that from and after the passing of this act it shall and may be lawful for the judges of assize, who have gone the several circuits since the passing of the said act, as well as future judges of assize respectively, to grant such certificate as is required by the said act; and the said judges of assize are hereby authorised and required to receive from every such officer as, previous to the passing of the said act, was lawfully entitled to any fees abolished by the said act, an account in writing of what they severally claim to be due to them for such abolished fees, which account shall be verified upon the oath of the party claiming the same, in like manner as is provided by the said act in respect to the clerks of assize and clerks of the peace. *56 G.3. c.116.* **Judges of assize may grant certificate to certain officers to receive compensation for abolished fees;**

§ 2. The amount of every such account, after being verified as aforesaid, shall be paid in the same manner as is provided in and by the said act, in respect to the clerks of assize and clerks of the peace. **to be paid in same manner as is provided by recited act.**

§ 3. And whereas doubts have arisen whether the said act extends to prisoners confined in gaols and prisons under civil process for debt only, and whether prisoners confined in the gaols and prisons of liberties and franchises under civil process for debt, and the gaolers and keepers of such gaols and prisons, are within the meaning and purview of the said recited act: And whereas it is expedient that such doubts should be removed; it is therefore declared and enacted, that the said recited act and the provisions therein contained shall be deemed and construed to extend and shall extend to all prisoners, as well civil as criminal, whether **Recited act to extend to prisoners for debt.**

56 G.3. c. 116.

confined for debt or crime in any of the prisons in *England*, except as to the said prisons in the said act excepted; and that the gaolers and keepers of all such gaols and prisons except as aforesaid, and their servants, as well within liberties as without, shall have compensation for their fees or gratuities abolished by the said recited act or this act, as in the said recited act is mentioned.

Allowances to the gaoler of Dovor castle prison, &c. how to be paid.

§ 4. The allowances made to the bodar or keeper of the prison of *Dovor* castle, in lieu of fees and gratuities paid or payable by any prisoner on his or her entrance, commitment, or discharge to or from such prison, and also the compensation to the registrar of the cinque ports and clerk of *Dovor* castle for the *liberati* granted to any debtor or * his or her discharge, shall be paid out of the funds raised by virtue of *An act for the relief of poor debtors and others confined within the gaol of* Dovor *castle*: Provided always, that such allowance and compensation shall be verified, allowed, and paid in the same manner as the relief to such poor debtors, and payment for the same, is directed to be allowed, verified and paid by the said recited act.

* *Sic.*

54 G.3. c. xcvii.

XII. Spirituous Liquors, carrying into, or selling in Prisons.

[4 G. 4. c. 64. § 40. — 6 G. 4. c. 80.]

4 G.4. c.64. Punishment for carrying spirituous liquors into prisons.

By stat. 4 *G.* 4. *c.* 64. § 40. If any person in contravention of the existing rules, shall carry or bring, or attempt or endeavour to carry or bring into any prison to which this act shall extend, any spirituous or fermented liquor, it shall be lawful for the gaoler, keeper, turnkey, or any other of the assistants to the said gaoler or keeper, to apprehend or cause to be apprehended such offender, and to carry him or her before a justice of the peace (who is hereby empowered to hear and determine such offence in a summary way), and if he shall lawfully convict such person of such offence, he shall forthwith commit such offender to the common

tion, and all licences granted or to be granted contrary to this provision, shall be void; and if any gaoler, keeper, or officer of any gaol, prison, or house of correction, shall sell, use, lend, or give away, or knowingly permit or suffer any spirits to be sold, used, lent, or given away in any such gaols, prisons, or houses of correction, or brought into the same, other than and except such spirits as shall be prescribed or given by the prescription and direction of a regular physician, surgeon or apothecary, and to be applied in pursuance of such prescription from the shop of some regular apothecary, every such gaoler, keeper, or governor, shall for every such offence forfeit the sum of 100*l.*; and in case any such gaoler, &c. being convicted thereof as aforesaid, shall again offend in like manner, and be thereof a second time lawfully convicted, such second offence shall be deemed a forfeiture of his office.

6 G.4. c.80.

retailing spirits within gaols, &c.

§ 135. It shall be lawful for his H. M.'s justices of the peace, or any one of them, upon information upon oath that any spirits are kept and disposed of in any such gaol, prison, or house of correction, to enter and search, or to authorise and empower any constable, headborough, or other peace officer of the parish where any such places are situated, by warrant under his hand and seal, to enter and search any such gaol, prison, or house of correction; and in case any spirits shall be found therein (except such as are directed to be used medicinally as aforesaid), it shall and may be lawful for such constable, headborough, or overseer of the poor, to seize such spirits, and to cause the same to be forthwith staved and destroyed.

XIII. Officers of the Prisons — their Powers and Duties, &c.

(*a*) *Visiting justices.*
[4 G. 4. c. 64.]

(*b*) *Sheriff.*
[4 G. 4. c. 64.]

(*c*) *Keepers, Matrons, Turnkeys.*
[4 G. 4. c. 64.]

(*d*) *Chaplains.*
[4 G. 4. c. 64.]

(*e*) *Surgeons.*
[4 G. 4. c. 64.]

(*f*) *Annual Statement to Secretary of State of the State Establishment of Officers and Servants.*
[5 G. 4. c. 85.]

(*a*) Visiting Justices.

[4 G. 4. c. 64. § 16, 17, 18. 23.]

By stat. 4 *G.* 4. *c.* 64. § 16. It is enacted, that the justices in every county, riding, division, district, city, town, or place to which this act shall extend, at the general or quarter sessions next after the commencement of this act, and at every ensuing general

4 G.4. c.64. Visiting justices shall be appointed by ... sessions.

4 G. 4. c. 64.

or quarter sessions, shall and they are hereby required to nominate two or more justices who shall consent thereto, to be visitors of each gaol and house of correction within their jurisdiction, and to report the names and places of abode of such visiting justices to one of H. M.'s principal secretaries of state; and one or more of the visiting justices so appointed shall personally visit and inspect each prison, at least three times in each quarter of a year, and oftener if occasion shall require, and shall examine into the state of the buildings, so as to form a judgment as to the repairs, additions, or alterations which may appear necessary, strict regard being had to the classification, inspection, instruction, employment, or hard labour, required by this act, and shall further examine into the behaviour and conduct of the respective officers, and the treatment, behaviour, and condition of the prisoners, the means of setting them to work, the amount of their earnings, and the expenses attending the prison, and of all abuses within the same, and in matters of pressing necessity, and within the powers of their commission as justices, shall take cognisance thereof, and proceed to regulate and redress the same; and if the said visitors shall at any time observe, or be satisfactorily informed of any extraordinary diligence or merit in any prisoners under their inspection, they shall report the same to the justices of peace for the county, riding, division, district, city, town, or place, at their next or any subsequent general or quarter session to be holden for the county or place in which such prison is situate, in order that such justices may, if they shall think proper, recommend any such offender to the royal mercy, in such degree or upon such terms as to them shall seem meet.

Duties of such visitors.

Visitors may recommend offenders on account of good conduct.

§ 17. Provided always, that it shall be lawful for any justice of the peace for any county, riding, or division, district, city, town, or place, at his own free will and pleasure, and without being appointed a visitor, to enter into and examine any prison of such county, riding, division, district, city, town, or place, at such

Any justice may visit the prison, and report abuses to the sessions.

ment (*a*); but that, nevertheless, it shall and may be lawful for any visiting justice, so appointed as aforesaid, to visit and inspect, at all times when he shall think proper, the apartment or place in which such person shall be kept or confined in any prison, and also to see such person, and to hear or receive any representation from him or her as to his or her treatment in such prison, and to enquire and examine into the same; any thing herein contained to the contrary thereof notwithstanding. 4 G. 4. c. 64.

By § 23. It is enacted, that at every general or quarter sessions, the visiting justices shall make a report in writing of the state and condition of each prison within their jurisdiction, of what repairs, additions, or alterations shall have been made or may be required, and of any abuse or abuses which they may have observed, or of which they may have received information, in the management of the prison, as well as of the general state of the prisoners, as to morals, discipline, employment, and hard labour, and observance of rules; and the justices assembled at such sessions shall proceed to consider every such report, and to act forthwith as they may see occasion. Visiting magistrates to report the state of the gaol to quarter sessions.

(*b*) Sheriff.

[4 G. 4. c. 64. § 6. 74.]

By stat. 4 *G.* 4. *c.* 64. § 6. It is enacted, that all persons who, in pursuance of any such order, shall be removed to, committed to, or detained in the part of such united or contiguous buildings which shall be so declared and ascertained aforesaid to be the gaol, shall from thenceforth be deemed to be in the legal custody of the sheriff and of the gaoler appointed by the sheriff, in the same manner as if such person had been committed to the common gaol before the passing of this act: Provided also, that the sheriff shall not be answerable for the safe custody of any person who, in pursuance of any such order, shall from time to time be removed to, committed to, or detained in any part of such united or contiguous buildings, other than the part so ascertained and declared to be the gaol. Persons removed to the part of the building declared to be the gaol, shall be deemed in custody of the sheriff, who shall cease to be answerable for prisoners in any other part of the building.

§ 74. All matters and things which by this act the sheriff of any county is required or authorised to do and perform, shall, in those districts, cities, towns, liberties, or places where the sheriff hath no jurisdiction, be done and performed by the bailiff or bailiffs, or other like officer or officers, having or exercising within their respective districts, cities, towns, and liberties, duties analogous to the duties of the sheriff of a county; and that all matters and things which by this act the treasurer of any county is required or authorised to do and perform, shall, in those places where the county treasurer hath no authority, be done and performed by the officer or officers having and exercising within such places duties analogous to those of a county treasurer; and that all matters and things which by this act the clerk of the peace of Officers required to perform certain duties.

(*a*) To be kept "*in salvâ et arctâ custodia*," says *Dalton*, *c.* 170. *p.* 410. means "*salva*," that the prisoner cannot escape; "*arcta*," that is, without conference with others, or intelligence of things abroad. See also *Com. Dig.* tit. *Imprisonment* (I). 2 *Bulst.* 148, 191. 2 *Haw. c.* 16. § 15. *Wyndham's case*, 1 *Str.* 3. See also *Rex* v. *Eastaff*, 1 *Gow*, 138. and *Hans. Parl. Deb.* vol. xxxvi. p. 1025.

4 G.4. c.64.

any county, riding, or division is required or authorised to do and perform, shall, in those places where the clerk of the peace of the county hath no authority, be done and performed by the town-clerk or other like officer having and exercising within such places duties analogous to those of the clerk of the peace of any county.

(c) Keepers, Patrons, Turnkeys.

[4 G. 4. c. 64. § 14. 19, 20, 21, 22. 25, 26, 27. 34. 40, 41.]

4 G.4. c.64. Gaolers shall attend quarter sessions next after commencement of act, and future quarter-sessions, to report on actual state of prisons, &c.

By stat. 4 *G.* 4. *c.* 64. § 14. The gaoler and keeper of every gaol and house of correction, maintained at the expense of any county, or of any such riding or division of a county as aforesaid, in *England* and *Wales*, or maintained by any district, city, town, or place specified in the schedule to this act annexed marked (A), shall make a report in writing, of the actual state and condition of every such gaol and house of correction, and of the number and description of prisoners confined therein, to the justices, at the several general or quarter sessions to be holden next after the commencement of this act, and at every ensuing general or quarter sessions in every such county, riding, division, district, city, town, or place; and shall, at every such general or quarter sessions, attend and give answer upon oath to all such inquiries as shall be made by the justices at such sessions with respect to the state and condition of every such gaol and house of correction, and of the prisoners confined therein, and with respect to any other matters and things relating to the said gaol and house of correction, respecting which such justices shall deem it necessary to make any enquiry for the purpose of proceeding and continuing to carry this act into execution, and of ascertaining how far every such gaol and house of correction is capable of affording the means of the classification required by this act.

Returns to be

By § 19. The keeper of every gaol and house of correction, to

prisoners being in such prison, whether such session shall be held under any commission or by virtue of any charter or prescription, transmit by the post of that day to one of H. M.'s principal secretaries of state, a calendar containing the names, the crimes, and the sentences of every prisoner tried at such session, and distinguishing, with respect to all prisoners capitally convicted, such of them as may have been reprieved by the court, and stating the day on which execution is to be done upon those who have not been reprieved; and that whenever the court shall adjourn for any longer time than one week, the day upon which the adjournment shall be made shall be deemed the termination of the session within the meaning of this act; and every keeper of any such prison, who shall neglect or refuse to transmit such calendar, or shall wilfully transmit a calendar containing any false or imperfect statement, shall for every such offence forfeit the sum of 20*l*.

Keeper of every prison.

Penalty, 20*l*.

§ 21. And, for the better ensuring the strict observance of the rules and regulations to be made for the government of the prisons to which this act shall extend, it is enacted, that at each quarter sessions of the peace, the keeper of every prison within the jurisdiction of the court holding such session shall and is hereby required to deliver or cause to be delivered to such court, a certificate, signed by himself, which certificate shall contain a declaration how far the rules laid down for the government of his prison have been complied with, and shall point out any and every deviation therefrom which may have taken place; and if any keeper of a prison shall neglect to deliver, or cause to be delivered, such certificate as aforesaid, he shall forfeit for every such offence the sum of 10*l*.

Keeper shall deliver to court of quarter sessions a certificate how far rules have been observed.

Penalty, 10*l*.

§ 22. One week before the *Michaelmas* session in every year, the keeper of every prison to which this act shall extend shall make up a return of the state of his prison for the year then ending, in the form contained in the schedule annexed to this act, marked (B), and shall deliver the same, or cause the same to be delivered, to the clerk of the peace, or his deputy, for the use of the justices assembled at such quarter session.

Keeper to make a return as in schedule (B) to the clerk of the peace or his deputy previous to every Michaelmas quarter sessions.

§ 25. It shall and may be lawful for the justices assembled at the general or quarter sessions, and they are hereby empowered and required to nominate and appoint such keepers, matrons, taskmasters, schoolmasters, and other officers, as to them may seem expedient, for every prison within their jurisdiction to which this act shall extend, except the keeper of the common gaol; and to remove, as occasion may require, all officers so by them nominated and appointed: Provided always, that no woman shall be keeper of any prison in which male prisoners are confined.

Justices may appoint keepers and other officers.

Keeper of the gaol excepted.

§ 26. It shall and may be lawful for the justices assembled at the general or quarter sessions, and they are hereby empowered, to fix salaries and allowances, to such amount, and subject to such conditions, as to them shall seem meet, for the keeper of the common gaol, and for every keeper, matron, taskmaster, schoolmaster, and officer of each gaol and house of correction within their jurisdiction; and to order such salaries, and the expense of such allowances, to be paid out of the rate lawfully applicable thereto; and the salaries and allowances so fixed, to alter, reduce, augment,

Justices to fix salaries of keepers, &c.

4 G. 4. c. 64.

Gaoler may be superannuated, and allowed a pension.

suspend, or stop from time to time as occasion shall require; and in case any gaoler or keeper of any prison shall from confirmed sickness, age, or infirmity, become incapable of executing the office in person, the justices of the peace at any general or quarter sessions of the county, riding, division, district, city, town, or place respectively, shall take the circumstances of the case into their consideration; and if such justices shall deem it expedient, they are hereby empowered to grant to such gaoler or keeper such an annuity as they in their discretion shall think proportioned to the merits and time of his service, and may order the payment thereof out of the rates lawfully applicable to the building or repairing of such gaols and prisons: Provided always, that the annual amount paid by way of superannuation or allowance to any retired keeper of any prison, shall not exceed the amount of two-thirds of the salary fixed for the succeeding keeper of such prison.

When keeper or other officer shall be removed or resign, &c. two justices may direct the sheriff to eject them from apartments in the prison.

§ 27. Whenever the keeper or any other officer of any common gaol or other prison to which this act shall extend, shall be removed from or resign his or her office, or shall depart this life, every keeper or other officer so removed or resigning, and his or her family, and the family of every such deceased keeper or other officer, shall forthwith quit the possession of the house or apartments in which he, she, or they shall have previously resided by virtue of such office; and if any keeper or other officer so removed or resigning, or any members of the family of any keeper or other officer so removed, resigning, or departing this life, shall refuse or neglect to quit such possession for forty-eight hours after notice given to him, her or them, in writing, by the under-sheriff, or other officer appointed by the sheriff, in case the house or apartments of which possession shall be required shall be in the common gaol, and by the clerk of the peace in case such house or apartments shall be in any house of correction, any two justices, upon proof made before them of such removal, resignation, or death, and of the service of such notice, and of such neglect or refusal to comply therewith, may by warrant under their hands and seals, direct the

shall, on every *Michaelmas* quarter sessions, deliver to the ces a statement of the condition of the prisoners, and his ob- itions thereupon. 4 G. 4. c. 64.

40. If any gaoler or keeper shall sell, use, lend, or give away, owingly permit to be sold, used, lent, or given away, in such n, or brought into the same, any spirituous or fermented r, he shall, for every such offence, over and above any other shment by this act enacted, forfeit 20*l.* Penalty on gaoler permitting the sale of spirituous liquors.

41. The keeper of every prison shall have power to hear all plaints touching any of the following offences, (that is to say,) Disobedience of any of the rules of the prison. Assaults by one person confined in such prison upon another, no dangerous wound or bruise is given. Profane cursing and swearing. Any indecent behaviour, and any irreverent behaviour at el, all of which are declared to be offences by this act, if nitted by any description of prisoners. Absence from chapel without leave. Idleness or negligence in work, or wilful mismanagement of ich are also declared to be offences by this act if committed y prisoner under charge or conviction of any crime; and the keeper may examine any persons touching such offences, and determine thereupon, and may punish all such offences by ing any offender to close confinement in the refractory or ry cells, and by keeping such offenders upon bread and water for any term not exceeding three days. Power of the keeper of a prison to punish certain offences.

(*d*) Chaplains.

[4 G. 4. c. 64. § 28, 29, 30, 31, 32. 34.]

stat. 4 *G.* 4. *c.* 64. § 28. The justices assembled in general arter sessions shall and they are hereby required from time re to nominate for each prison within their jurisdiction, to this act shall extend, a clergyman of the church of *England* chaplain thereof; and the said justices may, if it seem to expedient, nominate the same clergyman to be and officiate aplain to any two prisons situate within a convenient distance each other; and the said justices are hereby authorised to nt a salary to be paid to the clergyman so nominated chaplain resaid, out of the county rate, or rate lawfully applicable to aintenance of such prisons; and the amount of salary shall gulated in the following manner; viz. where the chaplain be appointed to one prison only, and the number of prisoners, ling debtors, which the said prison is calculated to receive, not exceed 50, then the salary to be paid to him shall not be than 150*l.*; where the chaplain shall be appointed to one only, and the number of prisoners, including debtors, which id prison is calculated to receive does not exceed 100, e salary shall not be more than 200*l.*; where the chaplain e appointed to one prison only, calculated to contain more 00 prisoners, including debtors, the salary shall not be more 250*l.*; and where the chaplain shall be appointed to one only, calculated to contain more than 200, or where the n shall be appointed to two prisons, whatever the number Justices may appoint a clergyman to each prison. His salary. Where the number of prisoners does not exceed 50, 150*l.* Number not exceeding 100, 200*l.* Exceeding 100, 250*l.* Number of prisoners exceeding 200, or chaplain ap-

4 G.4. c.64.

pointed to two prisons, salary to be discretionary in justices.

Where two prisons have one keeper, they shall be considered as one with respect to the duties and salary of the chaplain.

Clergyman not to officiate till licensed by the bishop.

Duties of chaplains.

of prisoners such two prisons may be calculated to contain, it shall be lawful for the justices to appoint the salary at their discretion, with reference to the duties to be performed: Provided also, that when any two or more prisons shall be under the custody of one and the same keeper, they shall be considered as one prison, with reference to the duties and salary of the chaplain; provided also, that in case of sickness or necessary engagement, the chaplain shall appoint a clergyman to be his substitute for the occasion, such substitute being approved of by the visiting justices; and the name and residence of such substitute shall be specified in the chaplain's journal.

§ 29. No clergyman so nominated shall officiate in any prison until he shall have obtained a licence for that purpose from the bishop of the diocese wherein the prison is situate, nor for any longer time than while such licence shall continue in force; and notice of every such nomination shall, within one month after it shall take place, be transmitted to the bishop by the clerk of the peace or town-clerk.

§ 30. Every such chaplain shall on every *Sunday*, and on *Christmas-day* and *Good Friday*, perform the appointed morning and evening services of the church of *England*, and preach at such time or times between the hours of nine and five of the day, as shall be required by the rules and regulations to be made as directed by this act; and shall catechise or instruct such prisoners as may be willing to receive instruction; and shall likewise visit the prison on such other days, and perform such other duties as shall be required by the rules and regulations to be made as directed by this act; and shall administer the holy sacrament of the Lord's supper to such prisoners as shall be desirous, and as such chaplain may deem to be in a proper frame of mind to receive the same; and such chaplain shall also frequently visit every room and cell in the prison occupied by prisoners, and shall direct such books to be distributed and read, and such lessons

perform the duties required of him by the rules and regulations to be made as directed by this act, they are hereby empowered to remove him from such office. 4 G. 4. c. 64.

§ 31. If any prisoner shall be of a religious persuasion differing from that of the established church, a minister of such persuasion, at the special request of such prisoner, shall be allowed to visit him or her at proper and reasonable times, under such restrictions imposed by the visiting justices as shall guard against the introduction of improper persons, and as shall prevent improper communications. Ministers allowed to visit other prisoners under certain restrictions.

§ 32. In case any chaplain shall, from confirmed sickness, age, or infirmity, become incapable of executing the office in person, the justices of the peace, at any general or quarter sessions of the county, riding, division, district, city, town, or place respectively, shall take the circumstances of the case into their consideration; and if such justices shall deem it expedient, they are hereby empowered to grant to such chaplain such annuity as they in their discretion shall think proportionate to the merits and time of his services, and may order the payment out of the rates lawfully applicable to the building and repairing such gaols and prisons: Provided always, that the amount so paid by way of superannuation or allowance to any retired chaplain of any one prison, shall not exceed the amount of two-thirds of the salary fixed for the succeeding chaplain of such prison. Power to quarter sessions to grant annuity to any chaplain incapable, from infirmity, of executing his office.

By § 34. It is enacted, that there shall be kept in every prison to which this act shall extend, a book, in which the chaplain and every other officer of the said prisons not residing within such prisons, but attending on or required to attend on such prison, shall regularly insert the date of every visit made by such chaplain or other such officer respectively; and every such entry shall be signed with the name and in the proper handwriting of such chaplain or other officer respectively, and shall contain such remarks as may be thought necessary on the occasion of any such visit; and the chaplain shall, on every *Michaelmas* quarter sessions, deliver to the justices a statement of the condition of the prisoners, and his observations thereupon. Books to be kept in which visits of chaplain, &c. shall be entered.

(e) Surgeons.

[4 G. 4. c. 64. § 33, 34.]

By stat. 4 *G.* 4. *c.* 64. § 33. It is enacted, that the justices in general or quarter sessions assembled shall and they are hereby required from time to time to appoint a surgeon, being a member of one of the royal colleges of surgeons, to each of the prisons within their jurisdiction to which this act shall extend; and every such surgeon shall and is hereby required to visit every prison to which he shall be so appointed twice at least in every week, and oftener if necessary, and to see every prisoner confined therein, whether criminal or debtor, and to report to every general or quarter sessions, the condition of the prison, and the state of health of the prisoners under his care; and he shall further keep a journal, in which he shall enter the date of every attendance on the performance of his duty, with any observations which may occur to him in the execution thereof, and shall sign the same with his name; Appointment of surgeons. Journal to be kept by them.

4 G. 4. c. 64.

and such journal shall be kept in the prison, but shall regularly be laid before the justices for their inspection at every quarter sessions, and shall be signed by the chairman of the sessions, in proof of the same having been there produced; and it shall and may be lawful for the justices, at every general or quarter sessions after such appointment, to direct a reasonable sum to be paid as salary to such surgeon, and also such sums of money as shall be due for medicines, and other articles for the sick. See also § 34. *ante*.

(*f*) Annual Statement to Secretary of State of the Establishment of Officers and Servants.

[5 G. 4. c. 85. § 8.]

5 G. 4. c. 85. Statement of establishment of officers and servants, showing the increase or diminution, to be transmitted to the secretary of state.

By stat. 5 G. 4. c. 85. § 8. It is enacted, "that the chairman of the *Michaelmas* quarter sessions of the peace which shall be held next after the commencement of this act, for every county, riding, division, district, city, town, or place to which the said recited act shall extend, shall transmit within fourteen days after the commencement of such sessions, to one of H. M.'s secretaries of state, a true and correct statement of the establishment of officers and servants employed in every prison within the jurisdiction of the justices assembled at such sessions, specifying the number and description of such officers and servants, the salaries and emoluments of each, and by whom such officers and servants are respectively appointed; and the said statements shall be carefully preserved in the office of such secretary of state; and the chairman of every such succeeding quarter sessions shall transmit, within 14 days after the termination of such *Michaelmas* quarter sessions, a true and correct statement of any increase or diminution in every such establishment of officers and servants, or in their respective salaries or emoluments, as have been made since the preceding *Michaelmas* quarter sessions."

XIV. Prisoners

vented a uniformity of practice in the management of prisons; it is enacted, "that from and after the 1st day of *September*, 1824, in every county, riding, or division of a county in *England* and *Wales*, and in the several districts, cities, towns, or places to which this act shall extend, all idle and disorderly persons, rogues and vagabonds, incorrigible rogues, and other vagrants, shall be committed to some house of correction belonging to such county, riding, or division, district, city, town, or place respectively; and that such house of correction shall be deemed the only legal place of commitment of any such person in pursuance of any conviction by lawful authority."

4 G. 4. c. 64. be committed to the house of correction, and not to a common gaol.

By § 8. It is enacted, that in all cases where any person liable by law to be committed to the house of correction shall be apprehended within any district, city, town, or place, mentioned in the schedule to this act annexed, and the inhabitants of any such district, city, town, or place are or shall be contributory to the support and maintenance of the house or houses of correction of the county, riding, or division in which such district, &c. or place is situate, it shall be lawful for the justices of the peace of such district, city, town, or place, to commit such person to the house of correction of the county, riding, or division in which such district, &c. or place is situate; and every person so committed shall and may be received, detained, dealt with, and ordered to be set to hard labour or other work, or conveyed, or sent away, or discharged, and be subject and liable to the same correction and punishment, to all intents and purposes, as if committed by any justice or justices of the peace of such county, riding, or division.

Power of justices to commit to the house of correction of the county, in cases where the person is apprehended in any district, &c. mentioned in this schedule.

(b) Employment.

[4 G. 4. c. 64. § 37, 38. — 5 G. 4. c. 84. § 18, 19. — c. 85. § 16, 17.]

By stat. 4 *G.* 4. *c.* 64. § 37. After reciting that whereas persons are often committed to prison for trial, who are willing to be employed in such work or labour as can be conveniently executed or done in the prison to which they are so committed, and it is fit that such persons should be so employed rather than that they should be obliged to remain idle during their confinement; it is enacted, that it shall and may be lawful for any one or more visiting justice or justices of any prison to which this act shall extend, to authorise, by an order in writing, the employment of any such prisoners, with their own consent, in any such work or labour; and it shall be lawful for the keeper of such prison to employ such prisoner in such work or labour accordingly, and to pay to such prisoners any such wages or portion of the same, and at such periods, as shall be directed by such justice or justices: Provided always, that it shall not be lawful to place together, on account of such employment, any prisoners who would otherwise be kept separate under the provisions of this act.

In what cases persons committed for trial may be employed in work.

Not to place together in work any prisoners who should be kept separate.

By § 38. Reciting, "whereas persons convicted of offences are frequently sentenced to imprisonment without being sentenced to hard labour; it is enacted, that it shall be lawful for two or more visiting justices of any prison to order that all such persons confined in such prison in pursuance of any sentence or conviction, except such prisoners as shall maintain themselves, shall be set to

Justices may employ prisoners.

4 G. 4. c. 64.

Where there is ability to earn, no claim for support from the county.

Account of work done to be kept by the keeper.

Allowance to be made for the work done.

some work or labour not severe: and it is hereby declared, that no such prisoner, who shall be of ability to earn, and who shall have the means of earning or of otherwise providing for his own subsistence, shall have any claim to be supported at the expense of the county, riding, or division, or by the sheriff or the keeper of the prison: Provided that when such ability shall cease by reason of sickness, infirmity, the want of sufficient work, or from any other cause, every such person shall, during the continuance of his inability, receive such provision and support as shall be directed for other convicted prisoners in the same prison; and the keeper of every such prison shall keep an account of the work done by every prisoner so set to work as aforesaid, and shall account to such prisoner for so much of the net profits which such prisoner shall have earned, or for such daily or other allowance for the work and labour done by such prisoner, as shall be directed either by the rules and regulations of such prison, or in case of no provision being made on this head by those rules and regulations, then for such part of the said net profits, or for such daily or other allowance as shall be directed by the visiting justices, and shall pay the amount of all accumulations of such allowance to such prisoner at his or her discharge."

5 G. 4. c. 85.

No prisoner shall be compelled to labour on the tread-wheel previous to conviction.

By stat. 5 G. 4. c. 85. § 16. Reciting, "and whereas by stat. 4 G. 4. c. 64. § 38. it was made lawful for one or more visiting justice or justices of any prison to which the same extended, to authorise, by an order in writing, the employment of prisoners committed for trial, with their own consent, in any such work as therein specified, it is enacted, that such consent of every such prisoner shall be freely given, and shall not be extorted or obtained by deprivation or threat of deprivation of any prison or other allowance; and that no prisoner before conviction shall, under any pretence, be employed on the tread-wheel, either with or without his consent."

Prisoners to be allowed suffi-

§ 17. Reciting, whereas it has been doubted whether prisoners

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and required the same to be taken into immediate consideration, and rectified. The sessions took the report into consideration, and made an order that the tread-mill should be applicable both as hard labour, in the cases of such prisoners as might be sentenced thereto, and for the employment of other prisoners; and also, that persons committed for trial, who were able to work, and had the means of employment offered them, by which they might earn their support, but who should obstinately refuse to work, should be allowed bread and water only. Upon an affidavit disclosing these facts, and the belief of Mr. *Stapylton* that bread and water, unaccompanied by any other article of food, does not afford sufficient nourishment for the due support of human nature, and that upon such a diet the health of prisoners cannot be preserved. — Argument on motion for a mandamus to the justices of the peace for the North Riding of *Yorkshire*, commanding them to enquire into and rectify this abuse. — By stat. 4 *G.* 4. *c.* 64. § 17. "any justice is empowered to enter into and examine the state of any gaol, as often as he shall think fit, and is required to report, in writing, any abuse therein, to the next quarter sessions; which abuse, so reported, shall be taken into immediate consideration, by the justices at such sessions, and the most effectual measures adopted for enquiring into and rectifying such abuse, as soon as the nature of the case will allow." Now, if this court see that the justices have not complied with the directions of that section, in rectifying the abuse presented, it will, by mandamus, compel them so to do. By § 10. certain regulations are prescribed for the management of prisons; and by the thirteenth regulation it is provided, that "every prisoner maintained at the expense of any county, &c., shall be allowed a sufficient quantity of plain and wholesome food, to be regulated by the sessions; regard being had (so far as may relate to convicted prisoners) to the nature of the labour required from or performed by such prisoners, so that the allowance of food may be duly apportioned thereto; and the justices may order for such prisoners of every description as are not able to work, or being able, cannot procure employment sufficient to sustain themselves by their industry, or who may not be otherwise provided for, such allowance of food as the justices shall think necessary for the support of health." Then § 37., reciting that "persons are often committed to prison for trial who are willing to be employed in such work as can be conveniently executed in the prison to which they are so committed, and it is fit that such persons should be so employed rather than that they should be obliged to remain idle during their confinement," enacts, that any visiting justice may "authorise, by an order in writing, the employment of any such prisoners, with their own consent, in any such work; and that the keeper of such prison is to employ such prisoners in such work or labour accordingly, and is to pay to such prisoners any such wages, or portion of the same, and at such periods as shall be directed by such justice." From these two sections it is obvious that such prisoners committed for trial, as have not the means of supporting themselves, and are, consequently, maintainable by the riding, are entitled to a sufficiency of plain and wholesome food; and that the magistrates have no authority to compel such prisoners to work at the tread-mill, or at any other species of

by the public; and therefore where a magistrate reported, as an abuse, to the justices at the quarter sessions, that untried prisoners had been compelled to work at the tread-mill, and the justices at sessions ordered that the tread-mill should be applied to the employment of other prisoners as well as those sentenced to hard labour; and that those committed for trial who were able to work, and had the means of employment offered them by which they might earn their support, but who refused to work, should be allowed bread and water only, this Court refused to grant a mandamus to compel the justices to order such prisoners any other food.

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employment against their inclinations. Now the order of the justices, made subsequently to the reported abuse, is in direct contravention of this act of parliament. The effect of that order is to compel the untried prisoners to work against their will; for if they do not work at the employment prescribed, they will have no other allowance than bread and water. That, too, cannot be considered "plain and wholesome food," within the meaning of the tenth section. Such food must necessarily be of a description adequate to the due preservation of health; yet that is negatived by the affidavit. It is true, that no individual case is mentioned in which the allowance of bread and water alone has had a prejudicial effect upon the health of the prisoner, but it is notorious, that many of the diseases afflicting the labouring classes, result from too spare a diet. [*Abbott* C. J. How are we to judge what is "plain and wholesome food?" That is matter upon which the justices are exclusively to decide. Can you refer us to any act of parliament which makes it compulsory on the county to provide with food persons committed for trial?] The only statutes bearing upon that point are 19 *Car.* 2. *c.* 4., 31 *G.* 3. *c.* 46. § 13., and 4 *G.* 4. *c.* 64. — *Abbott* C. J. It appears by the preamble of the 19 *Car.* 2. *c.* 4. that before that statute there was not any sufficient provision made for the relief and setting on work of poor persons committed to gaol for felony and other misdemeanors, and that they actually many times perished before their trial, and that the poor, living there idle and unemployed, became debauched, and came forth instructed in the practices of thievery and lewdness: and that statute then enabled the justices at sessions to provide a stock of materials, out of the county rate, for setting on work poor prisoners, and to bestow the profits arising from such labour towards their relief. The statute 31 *G.* 3. *c.* 46. § 12. extends the provisions of the former statute to all prisoners whatever within the gaols, who may be inclined and willing to work; and by the recital in the thirteenth section, it appears, that even at that time the health of the prisoners was frequently so affected by want of

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of opinion that the public are not bound to find food for those who are able but who are unwilling to work, and if that be so, the justices have already done more than the law required them to do, by ordering such persons bread and water. — *Best* J. (a) I think that a writ of *mandamus* ought not to issue in this case, because the magistrates have already done more than we could order them to do. If the law requires a certain thing to be done, we may order it to be done by the party upon whom the obligation of doing it is imposed. If he is to act according to his discretion, and he will not act or even consider the matter, we may compel him to put himself in motion to do the thing, but we cannot control his discretion. By the statute 4 *G.* 4. *c.* 64. § 17. the justices at sessions are bound, upon its being reported by a magistrate that certain abuses exist in a gaol, to take that report into consideration. In this case a magistrate made his report that prisoners committed for trial were compelled to work on the tread-mill. The justices at sessions took that report into consideration, and determined that the tread-mill should be applicable both as hard labour to such prisoners as were sentenced thereto, and for the employment of all other prisoners. So far they have complied with the act of parliament, by taking the matter into consideration; but it is said that they have not rectified that which is alleged to be an abuse, because they have directed the tread-mill to be used for the employment of all prisoners, and have also ordered that persons committed for trial, who are able to work, and have the means of employment offered them by the magistrates, by which they may earn their support, but who obstinately refuse to work, shall be allowed bread and water only; and it is insisted that that is not plain and wholesome food for their support, and therefore a violation of the thirteenth regulation. It is not, however, for us to decide whether it be or be not sufficient, the quality and quantity of the food being left to the discretion of the magistrates. But what right has a prisoner, to whom work is offered, and who is able to do it, but will not, to have any food at the expense of the county? According to the poor laws, he who is able to labour is to be maintained by labour only, and nothing is to be provided for him but a means of employment. Neither humanity nor policy requires that one on whom a charge of felony has been made on oath, should be in a better situation than one who lives unsuspected of crime. The common law made no provision for maintaining prisoners in idleness. And the preamble of the 19 *Car.* 2. *c.* 4. is a legislative declaration of the mischievous consequences resulting from poor prisoners not having the means of supporting themselves by labour, and from their living in idleness, and that statute, as a remedy for this error, enacts that the justices shall provide materials for setting on such prisoners to work. The wise principle of that, as well as all other statutes for the maintenance of the poor was, that employment should be provided for them by which they might support themselves. The 4 *G.* 4. sanctions that principle. The thirteenth regulation enables "the justices to order for such prisoners *of every description as are not able to*

(a) *Holroyd* J. was in the bail-court.

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work, or being able cannot procure employment sufficient to sustain themselves by their industry, or who may not otherwise be provided for, such allowance of food as they shall think necessary for the support of health." The thirty-seventh section enables the magistrates to employ prisoners committed for trial *with the consent* of such prisoners. This section prevents them from forcing such prisoners to work against their will, but it does not oblige them to find food for such as are able and will not work. An idle person has no right to the maintenance now claimed for him, and therefore we cannot order the magistrates of the county to provide better food for such prisoners than they have already offered them. I do not mean to say that magistrates in all cases would be justified in offering to such prisoners the same severe labour that persons condemned to hard labour are bound to perform. Inasmuch as the object of employment of prisoners committed for trial is support and not punishment, it may perhaps be fit to provide the most profitable and least irksome labour which, consistently with the security of the prisoners and the situation of the gaol, can be provided. Rule refused.

5 G. 4. c. 84. Convicts may be kept to hard labour, and may be removed to house of correction.

By stat. *5 G. 4. c.* 84. § 18. It is enacted, that it shall be lawful to keep to hard labour every offender under sentence or order of transportation, while he or she shall remain in the common gaol, if his or her health shall permit, and if one or more of the visiting justices of such gaol shall give a written order to that effect; and that it shall be lawful for one of H. M.'s principal secretaries of state, if he shall think fit, to order that any such offender be removed from the common gaol to the house of correction, and there kept to hard labour.

Time of imprisonment to be deemed part of term.

And by § 19. The time during which any offender shall continue in any gaol or house of correction, or in any such place of confinement as aforesaid, under sentence or order of transportation or banishment, shall be taken and reckoned in discharge or part discharge of the term of his or her transportation or banishment.

it is enacted, that it shall be lawful for any one or more of the visiting justice or justices of any prison to which this act shall extend, from whence any prisoner shall be discharged, to direct that such moderate sum of money shall be given and paid to any and every such prisoner so discharged, who shall not have the means of returning to his or her family or place of settlement, or resorting to any place of employment or honest occupation, as in the judgment of such justice or justices shall be requisite and necessary for such purpose, under all the circumstances attending the case of any such prisoner; and that such sum of money shall be paid by the keeper of such prison to or for the use of such prisoner, for the purpose aforesaid; and that all such sums shall be provided for, either out of such bequests or benefactions as aforesaid, or in such manner as is by this act directed with respect to the expense of the support and maintenance of the prisoners in such prisons respectively. 4 G. 4. c. 64.

By stat. 5 G. 4. c. 85. § 22. Reciting, whereas it is desirable that more effectual means should be afforded, whereby prisoners discharged from prison should be enabled to return to their place of settlement; it is enacted, that when any prisoner discharged from prison shall be desirous of being supplied with the means of so returning, it shall and may be lawful for any two visiting justices of such prison, upon application from such prisoner, to take the examination in writing upon oath of such prisoner, as to his or her last legal place of settlement; and upon such examination, and such other evidence as the said visiting justices may be able to procure, it shall be lawful for the said visiting justices, if they shall so think fit, to afford to such prisoner the means of returning to his or her place of last legal settlement, in the manner hereinafter directed. 5 G. 4. c. 85. Discharged prisoners to be afforded means of returning to their place of settlement.

§ 23. Enacts, that it shall be lawful for the justices of the peace of each and every county, riding, or division, in *England*, in their general or quarter sessions assembled, to cause engraved copper-plates or printed forms of passes to be provided, according to the form in schedule (B) annexed to this act, bearing H. M.'s arms, and sealed with the county-seal, or with a seal to be specially provided for that purpose; and the said justices may cause the same to be issued to the keepers of the several prisons within their respective counties, ridings, or divisions, for the use of the visiting justices of each such prison, whenever any prisoner or prisoners discharged from or about to be discharged from such prison shall apply to be furnished with the same; and the said visiting justices shall, if after a due consideration of the circumstances they shall deem it expedient, fill up the blanks in every such pass, and certify the same, and make out a route in the proper column for the purpose, of each such prisoner, and for the child or children, if any, of each such prisoner, specifying the place to which such prisoner and such child or children is or are going, and the time to which the said pass is (except in cases of sickness or unavoidable accident) limited, in order that such prisoner may receive such allowances as are authorised by this act, not exceeding 1½*d. per* mile for such prisoner, and 1*d. per* mile for each child, which from being in a state of nurture or without other protection may have been confined in prison with such prisoner. Engraved or printed forms of passes to be provided for use of visiting justices.

5 G.4. c.85.

Overseers of the poor to pay a certain allowance to prisoners on producing their pass.

§ 24. Enacts, that upon the production of such pass to any overseer of the poor of any place through which such discharged prisoner shall proceed, according to the route specified in such pass, he shall, out of any money in his hands applicable to the relief of the poor, pay such discharged prisoner an allowance not exceeding the rate *per* mile specified in such pass as aforesaid, for the number of miles to the next city, town, or place to which he or she may be going, and he shall endorse on such pass the money so paid, and take a receipt for the same from the discharged prisoner, signed with his or her hand or mark.

County treasurer to repay overseer money advanced.

§ 25. Enacts that the said sums so advanced by any overseer shall, upon production and delivery of such receipt to the treasurer of the county, riding, or division in which the parish or place of such overseer (*a*), be repaid to such overseer, for the use of the fund for the relief of the poor of such parish or place, by the said treasurer.

Discharged prisoner shall deliver up his pass at the last place of receiving allowance.

§ 26. Enacts, that every such discharged prisoner shall, at the last place of his or her receiving any allowance under this act, deliver up such pass to the overseer of the poor advancing such allowance, who shall transmit the same to the keeper of the prison from which such prisoner shall have been discharged; and if there be endorsed upon such pass, or upon the cover thereof, the words "pass of a discharged prisoner," and the said pass be sent without a cover, or in a cover open at the sides, and without any paper or thing enclosed therein, and without any writing other than the matter of such pass and than the superscription upon the same, or upon the cover thereof, such pass shall be charged with the usual rate of postage at the post-office of the town or place from which it shall be so sent, but the amount of the said postage shall be remitted and returned to the keeper of such prison on his producing such pass to the postmaster of the town or place to which such pass shall be sent as aforesaid: Provided that such keeper shall have first signed the declaration contained in the schedule to this act annexed, and that such declaration shall have been attested by

The principal gaoler is only fineable for the voluntary escape of a felon suffered by his deputy; for no one shall suffer capitally for any crime, but he who is actually guilty of it. 2 *Haw. c.* 19. § 27.

Voluntary escape.

But for a negligent escape suffered by his bailiff, the sheriff is as much liable to answer as if he had actually suffered it himself; and the court may charge either the sheriff or bailiff for it; and if a deputy gaoler be not sufficient to answer a negligent escape, his principal must answer for him. 2 *Haw. c.* 19. § 29.

Negligent escape.

By stat. 4 *G.* 4. *c.* 64. § 43. It is enacted, that if any person shall convey or cause to be conveyed into any prison to which this act shall extend, any mask, visor, or other disguise, or any instrument or arms proper to facilitate the escape of any prisoners, and the same shall deliver or cause to be delivered to any prisoner in such prison, or to any other person there, for the use of any such prisoner, without the consent or privity of the keeper of such prison, every such person shall be deemed to have delivered such visor or disguise, instrument or arms, with intent to aid and assist such prisoner to escape or attempt to escape; and if any person shall, by any means whatever, aid and assist any prisoner to escape or in attempting to escape from any prison, every person so offending, whether an escape be actually made or not, shall be guilty of felony, and being convicted thereof, shall be transported beyond the seas for any term not exceeding fourteen years.

4 G. 4. c. 64. Conveying visitors, &c. in prisons to assist prisoners to escape.

Transportation for assisting prisoners to escape.

§ 44. And, to the intent that prosecutions for escapes, breaches of prison and rescues, may be carried on with as little trouble and expense as is possible; be it enacted, that any offender escaping, breaking prison, or being rescued therefrom, may be tried either in the jurisdiction where the offence was committed, or in that where he or she shall be apprehended and retaken; and in case of any prosecution for any such escape, attempt to escape, breach of prison, or rescue, either against the offender escaping or attempting to escape, or having broken prison, or having been rescued, or against any other person or persons concerned therein, or aiding, abetting, or assisting the same, a certificate given by the clerk of assize, or other clerk of the court in which such offender shall have been convicted, shall, together with due proof of the identity of the person, be sufficient evidence to the court and jury of the nature and fact of the conviction, and of the species and period of confinement to which such person was sentenced.

Method of trial and conviction of offenders making escapes, &c.

(e) Punishment of Refractory.

[4 G. 4. c. 64. § 41, 42.]

By stat. 4 *G.* 4. *c.* 64. § 41. It is enacted, that the keeper of every prison shall have power to hear all complaints touching any of the following offences; (that is to say,)

4 G. 4. c. 64. Power of the keeper of a prison to punish certain offences.

1stly. Disobedience of any of the rules of the prison.

2dly. Assaults by one person confined in such prison upon another, when no dangerous wound or bruise is given.

3dly. Profane cursing and swearing.

4thly. Any indecent behaviour, and any irreverent behaviour at chapel, all of which are declared to be offences by this act, if committed by any description of prisoners.

5thly. Absence from chapel without leave.

4 G. 4. c. 64.

6thly. Idleness or negligence in work, or wilful mismanagement of it, which are also declared to be offences by this act, if committed by any prisoner under charge or conviction of any crime; and the said keepers may examine any persons touching such offences, and may determine thereupon, and may punish all such offences by ordering any offender to close confinement in the refractory or solitary cells, and by keeping such offenders upon bread and water only, for any term not exceeding three days.

Further punishment of refractory prisoners by visiting justices, &c.

§ 42. It is enacted, that in case any criminal prisoner shall be guilty of any repeated offence against the rules of the prison, or shall be guilty of any greater offence than the gaoler or keeper is by this act empowered to punish, the said gaoler or keeper shall forthwith report the same to the visiting justices, or one of them for the time being; and any one such justice, or any other justice acting in and for the county, or riding, or division of a county, or for the district, city, town, or place to which such prison belongs, shall have power to enquire upon oath, and to determine concerning any such matter so reported to him or them, and to order the offender to be punished by close confinement for any term not exceeding one month, or by personal correction in the case of prisoners convicted of felony, or sentenced to hard labour.

(*f*) Removal in certain Cases.

[31 C. 2. c. 2. § 9. — 24 G. 3. sess. 2. c. 56. § 12. — 4 G. 4. c. 64. § 51, 52, 53.]

4 G. 4. c. 64. Justices in session may remove prisoners in case of want of repair of prison, or of contagious disease, and

By stat. 4 *G.* 4. *c.* 64. § 51. It is enacted, that whenever the justices in general or quarter sessions assembled shall deem it necessary that the prisoners, or any part of them, shall be removed from any house of correction within their jurisdiction, in order that the same may be repaired, improved, enlarged, or rebuilt, or on account of any contagious or infectious disease therein, or of the over-crowded state of such house of correction, or for any of the

jurisdiction as the justices with the consent of the said sheriff shall appoint, and to confine them therein during the time such common gaol shall be repairing, enlarging, improving, or rebuilding, or during the continuance of such contagious disease on account of which the said prisoners were removed, or during such time as shall be requisite for any purposes of this act; and that when such gaol shall be made fit for the reception and safe keeping of such debtors and other prisoners, then it shall be lawful for the said sheriff to remove thither all such prisoners as shall then be in his custody; and further, if a new common gaol shall be erected, or a prison previously used for other purposes shall be adapted to the use of a common gaol, and the justices in general or quarter sessions assembled shall, with the consent of the sheriff, order and declare that from a day to be named such new gaol, or prison newly adapted to such purpose, shall become the common gaol, it shall be lawful for the sheriff on that day, or at any time thereafter, to remove all prisoners in his custody to the last-mentioned gaol or prison. 4 G. 4. c. 64.

In cases where immediate removal of prisoners is necessary, visiting justices empowered to order the same.

§ 52. Whenever any contagious disease or other emergency shall render necessary the immediate removal of the prisoners, or any of them, confined in any gaol or house of correction, and that previous thereto it shall be impossible to obtain for such purpose the order of the justices in general or quarter sessions assembled, it shall and may be lawful for the visiting justices of such prison, and they are hereby empowered to issue an order under their hands and seals to the keeper of every such prison, to remove such prisoners, or any of them, to such other prison or other place of confinement within their jurisdiction as shall be specified in such order.

Order of such visiting justices shall be laid before sessions.

§ 53. Provided always, that every such removal shall be subject to all such restrictions as to its duration as is hereby required and directed, and that every such order of visiting justices shall be laid before the justices assembled at the general or quarter sessions of the peace which shall be held next after such order shall have been made: Provided also, that the prisoners confined in any common gaol of any county, city, town, or place, shall not be removed without the consent of the sheriff of such county, city, town, or place; provided also, that no removal made under the authority of this act shall be deemed or taken to be an escape; and that nothing herein contained shall extend to discharge the sheriff or other officer from being answerable for the actual escape of any prisoner in his custody.

In such removals from county gaols sheriff's consent necessary, and no such removal to be deemed an escape.

31 C. 2. c. 2. When only to be removed.

By stat. 31 *C.* 2. *c.* 2. § 9. If any person shall be committed to any prison for any criminal or supposed criminal matter, he shall not be removed from thence, unless it be by *habeas corpus* or some other legal writ, or where he is removed from one prison or place to another within the same county, in order to his trial or discharge, or in case of sudden fire or infection, or other necessity, on pain that the person making out and signing or countersigning any warrant for such removal, and the person executing the same, shall forfeit for the first offence 100*l.* and for the second 200*l.* to the party grieved, by action of debt, bill, plaint, or information, in the king's courts at *Westminster*. (*a*)

(*a*) In what cases gaolers are bound to deliver a copy of warrant of commitment on demand to prisoners, see Bail, (Habeas Corpus Act,) Vol. I.

14 G.3. sess. 2. c.56. Removal of prisoners confined under justices' orders, upon summary convictions, to houses of correction within the same jurisdiction.

And by stat. 24 *G.* 3. *sess.* 2. *c.* 56. § 12. After reciting that "whereas there are several persons confined in the county and city gaols in *England* and *Wales*, under sentences and orders made by one or more justice or justices of the peace at their sessions or otherwise upon conviction in a summary way, without the intervention of a jury;" it is enacted, "that it shall be lawful for any justice of assize or great sessions, or any two or more justices of the peace within whose jurisdiction such gaol is situate, to remove any such person or persons to *any house of correction* within the said jurisdiction, there to be confined, and to remain in execution of such sentence or order."

XV. Annual Report to the Secretary of State.

[4 G. 4. c. 64. § 24.]

4 G.4. c.64. A general report to be forwarded annually to the secretary of state to be laid before parliament.

By stat. 4 *G.* 4. *c.* 64. § 24. A general report, founded on the report of the visiting justices, on the report of the chaplain or chaplains, and on the certificates of the keepers of the several prisons, shall be prepared by the clerk of the peace, and submitted to the justices assembled at every *Michaelmas* quarter sessions; and when approved by the justices at such sessions, such report shall be signed by the chairman of such sessions, and shall be by him transmitted (together with a copy of the schedule (B) delivered by the gaoler) to one of H. M.'s principal secretaries of state; a copy of which report, with the said schedule attached to it, shall be laid before both houses of parliament, within one month next ensuing, if parliament shall be sitting, or within one month after the time when parliament shall next sit.

XVI. Fines, Penalties, Recovery, and Application—Appeal.

[4 G. 4. c. 64. § 69, 70, 71, 72, 73. 75.]



may cause the conviction to be drawn up in the following form of words, or in any other form of words to the same effect, as the case shall happen; *videlicet*, 4 G.4. c.64.

BE it remembered, that on ——— *in the year of our Lord* ——— *A. B. is convicted before me*, C. D., *one of his majesty's justices of the peace for the* ——— *of* ———, *for that the said* A. B. [specifying the offence and the time and place when and where the same was committed, as the case shall be], *and the said* A. B. *is for his said offence adjudged by me, the said justice, to forfeit and pay the sum of* ———, *or to be imprisoned in* ——— *for the space of* ———[as the case shall be]. *Given under my hand and seal the day and year first above mentioned.*

Appeal to quarter sessions.

§ 71. Provided always, that if any person shall think himself or herself aggrieved by any conviction of any justice, in pursuance of this act, such person may appeal to the justices of the peace at any quarter sessions of the county, riding, division, district, city, town, or place wherein such conviction shall have taken place, within four calendar months after the cause of such complaint shall have arisen, such appellant first giving or causing to be given ten clear days' notice at least in writing of his or her intention to bring such appeal, and of the matter thereof, to the justice or justices before whom the conviction shall have been had, and to the clerk of the peace for the county, riding, or division, district, city, town or place, in which such conviction shall have been had, and within two days after such notice entering into recognisance before some justice for such county, riding, or division, district, city, town or place, with two sufficient sureties, conditioned to try such appeal, and abide the order of, and to pay such costs as shall be awarded by the justices at such session; and the justices at such session, upon due proof of such notice being given as aforesaid, and of the entering into such recognisance, shall hear and finally determine the matter of such appeal in a summary way, and award such costs to the parties appealing or appealed against as they the said justices shall think proper; and the determination of such session shall be final, binding, and conclusive, to all intents and purposes.

Conviction not to be quashed for want of form.

§ 72. No order made touching any of the matters in this act contained, nor any conviction of any offender against this act, shall be quashed for want of form, or be removed or removable by *certiorari*, by any other writ or process whatsoever into any of H. M.'s courts of record at *Westminster*; and where any distress shall be made for any fine, penalty, or sum of money to be levied by virtue of this act, the distress itself shall not be deemed to be unlawful, nor the party making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceedings relating thereto; nor shall such party be deemed a trespasser *ab initio*, on account of any irregularity which shall be afterwards done by the party distraining, but the person aggrieved by such irregularity shall and may recover full satisfaction for the special damage (if any) in an action upon the case; but no plaintiff shall recover in any action for such irregularity as aforesaid, if tender of sufficient amends shall have been made by or on behalf of the party distraining before such action brought.

4 G. 4. c. 64.

Persons sued for any thing done in pursuance of this act may plead the general issue.

§ 73. If any suit or action shall be prosecuted against any person for any thing done in pursuance of this act, such person may plead the general issue, and give this act and the special matter in evidence at any trial to be had thereupon, and that the same was done by authority of this act; and if a verdict shall pass for the defendant, or the plaintiff shall become nonsuit, or discontinue his or her action after issue joined, or if upon demurrer or otherwise, judgment shall be given against the plaintiff, the defendant shall recover double costs, and have the like remedy for the same as any defendant hath by law in other cases; and though a verdict shall be given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant, unless the judge before whom the trial shall be shall certify his approbation of the action, and of the verdict obtained thereupon.

Venue to be laid in the county where the fact is committed.

§ 75. All actions, suits, and prosecutions to be commenced against any person for any thing done in pursuance of this act shall be laid and tried in the county where the facts were committed, and shall be commenced within six calendar months after the fact committed, and not otherwise.

XVII. Saving of Rights.

[4 G. 4. c. 64. § 9. 77.]

Rights of mayors, &c. having separate jurisdictions not to be affected.

By stat. 4 *G.* 4. *c.* 64. § 9. Nothing in this act contained shall extend to take away, lessen, vary, alter, or affect any right, privilege, or franchise, which before the passing of this act any mayor, bailiff, or justice of the peace for the time being of any city, town, or liberty, having a separate jurisdiction, had by means of any grant, charter, or special or local act of parliament, to commit prisoners to the gaol or house of correction of any county, riding, or division.

Where prisons built on crown land, the land

§ 77. Where any prison is situate on lands of the king's majesty, in right of his royal crown, or of his duchy of *Lancaster*, or of the duchy of *Cornwall*, such lands with their appurtenances

out of gaol; nor carry him to gaol within 24 hours from the time of the arrest, unless such person arrested shall refuse to be carried to some safe and convenient dwelling-house of his own appointment within some city, borough, corporation, or market-town, (if there arrested,) otherwise within three miles from the place of arrest, so as such dwelling-house be not the house of the person arrested, and be within the respective division or liberty. 32 G. 2. c. 28.

§ 2. No sheriff, &c. or other officer shall take more for one or more night's lodging, or for a day's diet, or other expenses of any person under arrest, than shall be allowed by order of sessions; which sessions shall make order therein, and vary the same from time to time as they shall see occasion; and shall cause a copy of every such order and of every variation or alteration thereof, signed by the clerk of the peace, to be put and kept up in some conspicuous place in the sessions-house, or other proper place, that the same may be there seen and examined. Officer taking for lodging of prisoner more than allowed. A copy of justice's order hung up in sessions-house, &c.

§ 3. And every sheriff and other person entrusted with the execution of process, shall deliver a printed copy of the several clauses in this act relating to bailiffs and other persons to be employed under them, to every such bailiff and other person; and shall also make it part of the condition of the bond to be given by such bailiff or other person, that he will show and deliver a copy of the said clauses to every person he shall arrest and go with to any public or other house where any liquor shall be sold, and that he will permit every person so arrested, or any friend of his, to read over the same clauses before any liquor, meat, or victuals shall be there called for or brought to such person so under arrest; and if any bailiff shall offend in the premises, he shall, besides the breach of the condition of the bond, be deemed guilty of a misdemeanor in the execution of the process, and punishable as such by virtue of this act. Sheriffs and secondaries of compters, to deliver printed copies of act to bailiff, &c.

§ 11. On the petition in term-time of any person being or having been under arrest, complaining of any exaction or abuse by the gaoler or other officer unto any of the courts of record at *Westminster*, from whence the process issued, or in vacation-time, to any of the judges of such court, or to the judges of assize of great sessions, or judges of any other court of record from whence such process issued, they shall hear and determine the same in a summary way, and make such order thereupon for redressing the abuses, and for punishing the offender, and for making reparation to the party injured, as they shall think just, together with full costs of the complaint; the same to be enforced by attachment, or in any other manner as other orders of the said courts or judges may be enforced. Redress of grievances.

By stat. 4 *G.* 4. *c.* 64. § 5. It is provided that prisoners for debt may be removed to and shall always be confined in the part or parts of the building, or united or contiguous buildings, which shall be ascertained or be appropriated as and for the gaol of the county, division, city, town, or place; and such removal shall not be deemed or taken to be an escape. 4 G. 4. c. 64. Prisoners for debt to be confined in that part of the building appropriated for the gaol.

See § 49. *ante*, p. 653.

By stat. 52 *G.* 3. *c.* 160. County justices may order parochial relief to debtors confined in other than county gaols under certain circumstances. *For this act*, see Vol. IV. tit. Poor — *Relief* to debtors.

XIX. Prisons of the King's Bench and Marshalsea.

[53 G. 3. c. 113.]

53 G. 3. c. 113.

By stat. 53 *G.* 3. *c.* 113. After reciting stat. 43 *Eliz. c.* 2., whereby the justices, at the general sessions, were directed to rate every parish to a certain sum, in manner therein expressed; and that all surplusage of money which should remain in the stock of any county, should, by the discretion of the justices of the peace in their quarter sessions, be bestowed for the relief of the poor hospitals in that county, and for other charitable purposes; and reciting stat. 11 *G.* 2. *c.* 20., passed in aid of stats. 43 *Eliz. c.* 2., and 12 *G.* 2. *c.* 29.; and that the sums secured to be paid by the said acts are not sufficient for the relief of the poor prisoners confined in the said *K. B.* and *Marshalsea* prisons; and that no adequate relief has been provided for the poor prisoners confined in the *Fleet* prison; and that *Bethlem* hospital is a charity for the reception and cure of lunatics and distracted persons from all parts of the kingdom, and from H. M.'s fleets and armies; and any surplus which shall remain of the monies provided by this act, after relieving the poor prisoners in the said prisons, may, with great propriety, be bestowed towards the relief of the said hospital; the said acts, so far as the same relate or apply to the yearly sums provided for the relief of the poor prisoners confined in the *K. B.* and *Marshalsea* prisons, and also stat. 11 *G.* 2., are repealed.

Treasurers directed to pay the sums mentioned in the schedule out of the county rate.

§ 2. And every treasurer of every county and division of a county mentioned in the schedule to this act annexed, shall, on or before *Aug.* 1st in every year, pay out of the public stock or rates of such county and division of a county respectively the several sums of money specified in the schedule to this act annexed, in manner following; (that is to say,) the sums for the relief of the prisoners confined in the *K. B.* and *Marshalsea* prisons to be paid to the treasurer for the county of *Surrey*; and the sums for the relief of the prisoners confined in the *Fleet* prison to be paid to the trea-

§ 6. If any treasurer shall neglect or refuse to pay over any such respective sums of money as ought to be paid by him to the treasurer of the county of *Surrey*, and the treasurer or chamberlain of the city of *London* respectively as aforesaid, or any treasurer of the county of *Surrey*, or treasurer or chamberlain of the city of *London*, shall neglect or refuse to pay over such respective sums of money as ought to be paid by him respectively by virtue of this act, then, upon the certificate or certificates, on oath, of the treasurer or treasurers, person or persons, to whom the same respectively ought to be paid, being delivered to either of H. M.'s courts of *K. B.* and *Common Pleas*, or to the court of *Marshalsea*, of such neglect or refusal, the said courts, or either of them, may make a rule on every such treasurer so neglecting or refusing, requiring such treasurer to pay the money so reported or certified to be due as aforesaid; and obedience to such rules respectively shall be enforced by the said courts, as rules of the said courts respectively are usually enforced. 53 G. 3. c. 113. Courts of K. B. and C. P. may enforce compliance with the regulations of the act.

§ 7. Every person who now is or hereafter shall be elected or appointed treasurer of any county, or division of a county, named in the schedule to this act annexed, shall, within one calendar month after *Aug.* 1st, or within one calendar month after his election or appointment respectively into such office of treasurer, transmit his name and place of abode to the clerk of the crown in H. M.'s said court of K. B., to be by him entered or registered in a book to be kept for that purpose, for which entries no fee or reward shall be taken; and in case of neglect or refusal, upon the report of the said clerk of the crown, made to the said court of K. B., of such neglect or refusal, every such treasurer shall be liable to be proceeded against as in case of neglecting or refusing to pay such money as aforesaid. Treasurers to register their names and places of abode.

§ 8. As often as there shall be occasion for the said courts respectively to make any rule as aforesaid, on any of the said treasurers in pursuance of this act, the whole cost and charge of making such rule, and all subsequent charges arising therefrom, shall be paid by the treasurer whose default or neglect shall cause the making of such rule. Charge of rules of court to be paid by treasurer, in case of his neglect.

§ 9. The sums provided by this act shall from time to time be distributed by the person or persons to whom the same respectively shall be directed to be paid as aforesaid by weekly payments, for the relief of such prisoners as shall from time to time be ordered to be relieved, in manner hereinafter mentioned. Money to be weekly distributed to prisoners.

§ 10. Any justice of the peace for the county of *Surrey* may order such relief as he shall think proper to be given to any prisoner confined in the said *K. B.* or *Marshalsea* prisons, and any alderman or justice of the city of *London* may order such relief as he shall think proper to be given to any prisoner confined in the said *Fleet* prison, but subject nevertheless to the provisions hereinafter contained, and to any rules, orders, and regulations which shall be made as hereinafter is mentioned: Provided always, that the sum to be given to any one prisoner shall not exceed 6*d. per diem*. Limiting the sum to be allowed to prisoners.

§ 11. Provided always, that no prisoner who shall be charged in execution for debt shall be relieved by virtue of this act after the first day of the term next following the time when he shall be charged in execution. No prisoner charged in execution to be relieved after the first day of the next term.

53 G.3. c. 113.

No prisoner to be relieved possessed of property above a certain sum.

§ 12. Provided always, that no prisoner shall be ordered to be relieved by virtue of this act until he shall first have made oath before a judge of one of the courts of law at *Westminster*, or of the *Marshalsea*, or a commissioner appointed by one of the said judges to take affidavits, that he is not worth 10*l.* in all the world, and that he cannot subsist himself without the relief or assistance provided by this act; and for wilfully forswearing or perjuring himself, he shall suffer as a person convicted of wilful and corrupt perjury.

§ 13. That no prisoner shall be relieved who shall have become supersedeable, or entitled to be discharged under any act for the relief of insolvent debtors.

§ 14. Directing the appropriation of surplus monies.

§ 15. Accounts to be kept and verified upon oath.

§ 16. Justices empowered to make regulations at their sessions, in addition to the provisions of the act.

The SCHEDULE to which this Act refers.

COUNTIES AND DIVISIONS.	The SUMS to be paid by them for the Relief of the Prisoners in the Prisons		
	King's Bench.	Fleet.	Marshalsea.
	£.	£.	£.
Bedford	5	5	—
Berks	10	10	—
Bucks	10	5	—
Cambridge — County	5	5	—
Cambridge — Isle of Ely and Town of Cambridge	5	5	—
Chester	10	10	—
Cornwall	10	5	—
Cumberland	10	5	—
Derby	10	10	—
Devon	20	15	—
Dorset — East Division	5	5	—
Dorset — West Division	5	5	—
Durham	15	10	—
York — East Riding	10	10	—
York — North Riding	15	10	—
York — West Riding	30	20	—
Essex — East Division	10	5	—
Essex — West Division	10	5	25
Gloucester	15	10	—
Hereford	10	5	—
Hertford	10	10	—
Huntingdon	5	5	—
Kent — East Division	10	5	—
Kent — West Division	10	5	25
Lancaster	30	25	—
Leicester	10	10	—

53 G.S. c.113.

COUNTIES AND DIVISIONS.	The SUMS to be paid by them for the Relief of the Prisoners in the Prisons of		
	King's Bench.	Fleet.	Marshalsea.
	£.	£.	£.
Holland Division -	5	5	—
Kesteven Do. -	5	5	—
Lindsay Do. -	10	5	—
sex - - - -	100	50	200
c - - - -	15	10	—
mpton - East Division - -	5	5	—
West Division - -	5	5	—
mberland - - -	15	10	—
gham - North Division - -	5	5	—
South Division - -	5	5	—
- - - - -	10	5	—
d - - - - -	5	5	—
- - - - -	10	10	—
set - West - - -	10	5	—
East - - -	10	5	—
mpton - - - -	15	10	—
d - - - -	15	10	—
Beccles Division - -	—	5	—
Woodbridge Do. - -	5	—	—
Bury St. Edmund's Do. -	5	5	—
Ipswich Do. - -	5	—	—
- - - - -	50	40	50
East Division - -	10	5	—
West Division - -	10	5	—
ck - - - -	15	10	—
orland East Ward - -	5	—	—
Kendal Ward - -	—	5	—
- - - - -	15	10	—
ster - - - -	10	10	—
ea - - - -	2	2	—
- - - - -	2	2	—
an - - - -	2	2	—
rthen - - - -	3	3	—
von - - - -	2	2	—
gh - - - -	3	3	—
- - - - -	2	2	—
rgan - - - -	3	3	—
reth - - - -	2	2	—
outh - - - -	3	3	—
omery - - - -	2	2	—
oke - - - -	2	2	—
rshire - - - -	2	2	—

XX. Of County Gaols in Counties divided into Ridings or Divisions; and of Sessions for such Gaols.

[5 G. 4. c. 12. — c. 85. § 21.]

5 G. 4. c. 12.

By stat. 5 *G.* 4. *c.* 12., passed 23d *March*, 1824, and intituled *An act to facilitate in those counties which are divided into ridings or divisions the execution of an act of the last session of parliament* (*viz.* stat. 4 *G.* 4. *c.* 64.) *for consolidating and amending the laws relating to the building, repairing, and regulating of certain gaols and houses of correction in* England *and* Wales. After reciting, that by stat. 4 *G.* 4. *c.* 64. § 2. "it was (amongst other things) enacted, that there should be maintained at the expense of every county in *England* and *Wales* one common gaol, and that the regulations and provisions contained in the said act should extend, in manner therein mentioned, to every such gaol: And whereas in certain counties in *England* there are distinct commissions of the peace for the several ridings and divisions into which such counties are divided, and distinct courts of sessions of the peace are holden for each of such ridings and divisions respectively, and in such counties there are no courts of general or quarter sessions holden for the whole county at large, in consequence whereof the provisions and regulations of the said act cannot in such counties be carried into execution: for remedy thereof, and in order to extend to such counties all the benefits of the said act;" it is enacted, "that in every county divided into ridings or divisions, having distinct commissions of the peace, there shall be held from time to time a court of sessions for the gaol of such county, of which court all the justices of the peace of every riding and division of such county shall be members; and any two of such justices shall be able to hold such court; and such court shall possess and exercise all the powers and authorities respecting the common gaol of such county, and all matters relating thereto, which are in and by the said recited act vested in the court of general or quarter sessions of the peace

In counties divided into ridings or divisions, a court of sessions for the gaol shall be held; and such court shall possess all the powers given by the former

by notice to be published in *The London Gazette*, and in some of the public newspapers most usually circulated within his county, summon the justices of each of the ridings or divisions into which the same is divided, to meet at some place in or near the county gaol, to be by him specified in such notice, and at a time not exceeding one month after the first publication of such notice, and there to form a court of sessions for the county gaol, for the purpose of carrying into execution the regulations and provisions of the said recited act and of this act; and the said court being so constituted shall proceed to elect a chairman and a clerk; and the said court, and the chairman thereof, shall proceed to execute all those matters and things which were by the said recited act directed to be done by the court of quarter sessions of the peace held at *Michaelmas* next after the passing thereof, and by the chairman of that court, and to do all such other matters and things as may be necessary or proper in regard to the county gaol."

holding such court.

Chairman and clerk to be appointed.

§ 3. "The clerk of the gaol sessions shall continue in his office until another shall be elected in his stead by the court of gaol sessions, and shall, with respect to the said recited act and this act, have and enjoy all the powers vested by the said recited act in the clerk of the peace of any county."

Clerk of gaol sessions to continue in office till another is appointed; with powers of clerk of peace.

§ 4. "The clerk of the gaol sessions shall, on receiving a precept commanding him so to do, signed by any two justices of the peace acting for any of the ridings or divisions of the county, summon the justices to meet in a court of gaol sessions, by a notice to be published at least twice in some of the public newspapers most usually circulated in the county, which notice shall declare the day, hour, and place at which such court is to be held; and also that the said clerk, if the court of gaol sessions shall be dissolved without adjournment, or shall adjourn for a longer time than three calendar months, shall by a like notice, to be issued of his proper authority, without any precept in that behalf, summon a court of gaol sessions to be held within three calendar months next after such dissolution or last adjournment."

Notice of holding gaol sessions.

§ 5. "The sessions for the county gaol shall be held in some place in the gaol, or within one mile thereof, unless there shall be special reasons for the contrary, which shall be expressed in the precept to be directed to the said clerk as aforesaid; and if it shall be held in the gaol, or within such distance thereof as aforesaid, all matters done thereat touching the county gaol shall be legal, though the sessions be held in some place not within the county."

Place for holding sessions.

§ 6. "The court of gaol sessions shall also elect a treasurer of the monies applicable to the repair of the county gaol, who shall not be the clerk of the said court; and the said treasurer shall receive and pay all monies to be raised for the repair of the county gaol, or to be disbursed by order of the court, and shall give discharges for the monies received, and apply the same as by such court shall be ordered, and shall keep a distinct account of such monies received and paid, and shall from time to time, when called on by the said court, account upon oath, if required, for all monies so by him received, and deliver in all vouchers respecting the same; and the said court shall from time to time appoint such salaries to such clerk and treasurer respectively as they shall think fit, to be paid out of the monies aforesaid; and such treasurer shall give such security for the faithful performance of his duty, as *the court of gaol sessions* shall direct."

Treasurer to be appointed.

5 G.4. c.85.

Proportions of county rates to be paid by each riding or division.

§ 7. Reciting, "whereas it is expedient that all the expenses incurred respecting any county gaol, where the county is so divided as aforesaid, whether arising out of the provisions of the the said recited act or of this act, or otherwise, should be discharged out of the county rates; and it is necessary to fix the proportions in which the several ridings or divisions shall contribute to such expenses; and it may also be necessary from time to time to vary the said proportions;" it is enacted, "that where in any such county there are, at the time of passing this act, (23d *March*, 1824,) any fixed proportions in which such expenses are or have been paid and borne, such proportions shall continue to be acted on, and the contribution shall be paid accordingly, till some alteration shall be made therein by the court of gaol sessions; and that where there are now no such fixed proportions, the said court shall forthwith fix the proportions in which the contribution is to be made; and the said court shall also have power and authority to alter the said proportions from time to time: Provided that no such alteration shall be made, unless the intention of making such alteration shall be expressed in the notice whereby the court is summoned, and shall be published for one month at the least before the court shall be held."

In case of any dispute as to the proportions in which the riding or divisions are to contribute towards the expense of the gaol, the same shall be settled by arbitration.

§ 8. "When the court of gaol sessions shall order an alteration to be made in the proportions in which the ridings or divisions of the county are to contribute towards the expenses of the county gaol, or shall negative a proposition for making such alteration, and any riding or division shall be dissatisfied therewith, it shall be lawful for the clerk of the peace of such riding or division, being thereunto authorised by an order of the court of quarter or gaol sessions of such riding or division, to apply to the justices of assize of the last preceding circuit, or of the next succeeding circuit, or to one of such justices, who shall by writing under their or his hands or hand nominate a barrister at law, not having any interest in the question, to arbitrate between the ridings or divisions; and such arbitrators shall summon the several clerks of the peace of the ridings or divisions interested in the matter in dispute to appear before him, at a time to be by him appointed, and there to produce all information touching the matter in dispute; and such arbitrator may, if he shall see fit, adjourn the hearing from time to time, and require all such further information to be afforded by either of the parties as shall appear to him meet and necessary; and shall, by his award in writing, determine the proportions in which such ridings or divisions shall contribute towards the said expenses; and his award shall be final and conclusive between the parties for ten years, and until further order shall be made thereon by the court of gaol sessions; and such arbitrators shall also assess the *courts* (a) of the arbitration, and shall direct by whom and out of what fund the same shall be paid."

5 G.4. c.85.

By stat. 5 *G.* 4. *c.* 85. § 21. Reciting, "that whereas by stat. 5 *G.* 4. *c.* 12. § 9. provision is made for settling by arbitration disputes between ridings and divisions as to the proportions in which they shall contribute to the expense of the county gaol, but by reason of some verbal inaccuracies in the said provision there may be some difficulty in acting thereon." It is enacted and declared, "that the clerk of the peace may be authorised to apply to

(a) Sic. Should be "costs." See 5 *G.* 4. *c.* 85. § 21.

the justices of assize for the nomination of an arbitrator under stat. 5 *G.* 4. *c.* 12., by an order of the court or quarter or general sessions of the riding or division; and that one arbitrator shall be competent to exercise all the powers and authorities given to the arbitrator or arbitrators by the same act; and that such arbitrator shall assess the *costs* of the arbitration, and direct by whom and out of what fund the same shall be paid. 5 G. 4. c. 85.

By stat. 5 *G.* 4. *c.* 12. § 9. When and so often as the court of gaol sessions shall find it requisite to raise money for the purposes of the said recited act (4 *G.* 4. *c.* 64.) or of this act, they shall make an order accordingly, and their clerk shall forthwith transmit a copy of such order, signed by the chairman, together with the amount of the sum of money to be paid by virtue of it, according to the then existing proportions, by each riding or division, to the treasurers of the several ridings or divisions of the county; which treasurers shall forthwith out of the monies in their hands, or if those monies shall be insufficient, then so soon as sufficient monies shall come to their hands, pay the sum required to the treasurer of the county gaol, and take his receipt for the same." 5 G.4. c.12. Order for money to be transmitted to treasurers of the several ridings or divisions.

§ 10. "When the monies necessary to be raised for the purposes of the said recited act or of this act shall exceed one half of the ordinary aggregate amount of all the annual assessments for the rates of the several ridings or divisions of any such county, taken on an average of all such rates for the last 7 years preceding, the court of gaol sessions may and is hereby authorised to mortgage all the rates of such county, by such instrument, and in such ways and means, and under such provisions of repayment, and with the same power of assignment, as in the said recited act are enacted respecting the mortgage of any county rates therein mentioned." Rates may be mortgaged for raising the money.

§ 11. "The court of gaol sessions shall and is hereby required to charge all the rates upon the several ridings and divisions of the county, in the same manner and for the same purposes as in and by the said recited act the justices in their general or quarter sessions are authorised and required to charge the rates of any county having one rate for the whole; and all the ways, means, and methods by the said recited act directed and allowed, as to the repayment of monies borrowed and the interest thereof, and the accounts respecting the same, shall be kept and observed by the court of gaol sessions, respecting the monies borrowed on account of the gaol of any county so divided as aforesaid: Provided that all the monies to be raised on the several ridings or divisions of any such county, for repaying money borrowed or the interest thereof, shall be raised in the same proportions as other monies for the purposes of the said recited act or of this act shall be raised at the time of such money being so raised." And see *ante*, § VII. Rates on each riding or division to be charged in same manner as rates on counties by recited act. Paying off sums borrowed.

§ 12. "All reports and statements directed by the said recited act to be made to the general or quarter sessions, shall be transmitted on or before the first days of *January*, *April*, *July*, and *October*, to the clerk of the gaol sessions, and be by him laid before the court at the sessions." Reports to be transmitted, and laid before court of gaol sessions.

§ 13. The chairman of the first court of gaol sessions held after the first day of *October* in each year, shall, within 14 days after the determination of such sessions, or any adjournment thereof, transmit to one of H. M.'s principal secretaries of state such account of proceedings, and such copies of rules and regulations, as *in and by the said act are ordered* to be transmitted by the chair- Reports, &c. to be transmitted by chairman of court of gaol sessions to secretary of state.

5 G.4. c.12.

man of the *Michaelmas* quarter sessions, and shall at the same time, or within three months afterwards, transmit such plans as in the said act are mentioned."

Returns from keeper of prisons to be delivered to clerk of gaol sessions.

§ 14. "The return directed to be made annually by the keeper of every prison, in the form contained in the schedule annexed to the said recited act, marked (B), shall be annually made by the keeper of every gaol of every county so divided as aforesaid, and delivered to the clerk of the gaol sessions of such county, two weeks at least before the first day of *October* in each year; and such clerk shall on the said first day of *October* prepare a general report founded on the report of the visiting justices and that of the chaplain, and on the certificates and reports of the keeper of the said gaol, and on any other report or document respecting the said gaol, and shall lay the same before the next gaol sessions; and such report, when approved by such sessions, shall be signed by the chairman thereof, and shall be by him, together with a copy of the schedule (B), transmitted to one of H. M.'s principal secretaries of state, for the purposes in the said recited act mentioned.

By whom convictions for recovery of fines, &c. shall be made.

§ 15. If any matter or thing be done within any county so divided as aforesaid, for which any fine, penalty, or forfeiture is by the said recited act (4 *G.* 4. *c.* 64.) imposed and directed to be paid to the county treasurer, every conviction made in pursuance of the said recited act for such matter or thing shall be made by one or more justices of the peace of the riding or division in which the offence is committed; and all forfeitures, fines, and penalties thereon accruing, shall be paid to the treasurer of the county gaol for the purposes of this act.

Common gaol of county to be deemed within each riding or division.

§ 16. In the case of every county so divided as aforesaid, the common gaol of such county shall, for all purposes relative to the jurisdiction of justices of the peace, be deemed to be within and taken as part of each of the ridings and divisions of which such county is composed; and every justice of the peace for each of such ridings and divisions shall have like power and authority to execute all things appertaining to his office therein, as in any part

or house of correction of the county, riding, or division, wherein or whereto such city, &c., is situate or adjacent, or with any two of them, for the support and maintenance, in such last-mentioned gaol or house of correction, of any prisoners committed thereto, from such city, &c.: Provided that no such contract be entered into by any justices of the peace of any county, &c. without an order for that purpose being made at some general or quarter sessions, or gaol sessions, having jurisdiction in that behalf, nor by the justices or other persons having the government of the prison of any such city, &c., without an order for that purpose being made at the sessions thereof; and every such contract may either be perpetual, or limited to a certain term of years, as the parties shall mutually agree; and during the existence of such contract, every prisoner who would otherwise be confined in the gaol or house of correction of the city, &c. so contracting, may be lawfully committed or removed to and confined in the gaol or house of correction so receiving him or her under such contract; and all prisoners so confined by contract, whether before or after trial, shall be subject in all matters and things to the same rules and regulations as if they were committed thereto by any of the justices of the county, &c.; and if committed before trial, shall be triable and tried in the same manner as if their offences had been committed in a part of the county, riding, or division, not within the city, &c. from whence such prisoners shall come; save only, that if the gaol or house of correction so receiving under contract a prisoner committed for trial shall be situate within two miles of the usual place of trial of the city, &c., wherein the offence charged against such prisoner shall be alleged to have been committed, it shall be lawful to try such prisoner in the manner heretofore accustomed, and for the magistrates or other proper officer of such city, &c. to direct the removal of such prisoner for trial, and to do all other acts necessary for such trial, or consequent thereon.

5 G.4. c.85.

No contract entered into without an order of the quarter sessions.

Prisoners to be committed to the prison contracted for.

§ 2. The monies to be paid under any such contract as aforesaid shall be raised in the same manner as monies for defraying the expenses of the gaol or house of correction for which a substitute shall be provided under such contract; and where such expenses are not wholly defrayed from the same fund, and there shall arise a difference of opinion between the parties interested in the several funds applicable to the several purposes of the prison, as to the proportion in which those funds respectively shall contribute to the sum to be paid to the county, riding, or division, for the use of its prison, and such difference shall not be adjusted by agreement between themselves, it shall be lawful for either of such parties to apply to the justices of assize of the last preceding circuit, or of the next succeeding circuit, or to one of such justices, who shall by writing under their or his hands or hand nominate a barrister at law, not having any interest in the question, to arbitrate between the parties; and such arbitrator may, if he shall see fit, adjourn the hearing from time to time, and require all such further information to be afforded by either of the parties, as shall appear to him meet and necessary; and shall, by his award in writing, determine the proportions in which such parties shall contribute towards the said expenses; and his award shall be final and conclusive between the parties; and such arbitrator shall also assess the costs of the arbitration, and shall direct by whom, and out of what fund, the same shall be *paid.*

Expense under the contract.

In case of dispute, to be settled by arbitration.

5 G.4. c.85.

During the contract, city, &c. so contracting not liable to provide a prison.

§ 3. During the existence of any such contract, if it shall extend to the whole of the prisoners who would otherwise be confined in the gaol or house of correction of the city, town, borough, port or liberty so contracting, such city, &c. shall not be liable to indictment or impeachment for the non-repair of its gaol or house of correction respectively; and if such contract shall extend to only a certain class or classes of its prisoners, such city, &c. shall not be liable to provide the accommodation required to be otherwise provided for the same class or classes of prisoners by the said recited act, or by any other act now in force.

Magistrates, &c. empowered to borrow money for rebuilding gaols, &c. in case it should appear more advisable than altering old ones.

§ 4. Enacts, that if it shall seem fit to the magistrates or superintending officers of any city, &c. that instead of altering or building any gaol or house of correction for their separate use, or contracting under the provisions aforesaid, it would be more advisable to raise a sum or sums of money in aid of building a new or of enlarging a county prison, it shall be lawful for them to agree with the justices of the peace, having authority or jurisdiction in and over any gaol or house of correction of the county, riding, or division wherein or whereto such city, &c. is situate or adjacent, or with any two of them, for the payment of such justices, having such authority as aforesaid, of any sum or sums of money to be by them applied in or towards the altering, enlarging, building, rebuilding, repairing, or improving such gaol or house of correction of the county, &c. aforesaid: Provided that no such agreement be entered into by any justices of the peace for any county, &c. without an order for that purpose being made at some general or quarter sessions or gaol sessions, having jurisdiction in that behalf. (See *5 G.4. c.12. ante*, § xx.)

Monies are to be raised for building gaols, &c.

§ 5. All monies to be paid under any such agreement as last mentioned, shall be raised in the same manner, and subject to the same conditions, as is directed in respect of monies to be raised for the building or rebuilding, repairing or enlarging any gaol or house of correction under the provisions of this act.

Money bor-

§ 6. It shall be lawful for such justices entering into any such

nexed, marked (A), and a statement of the establishment of officers and servants employed therein, specifying the number and description of such officers and servants, the salaries and emoluments of each, and by whom such officers and servants are respectively appointed, and a plan of every such prison, drawn upon a scale of $\frac{1}{16}$ of an inch to a foot; and the said copies and plans shall be carefully preserved in the office of such secretary of state; and such magistrate shall, in every subsequent *October*, until such a contract shall be entered into, transmit to such secretary of state a return in the form of the said schedule, and a copy of all additions to such rules and regulations, or alterations made therein, and a statement of any increase or diminution in such establishment of officers and servants, or in their respective salaries and emoluments, together with plans, on the scale above-mentioned, of any additions to the buildings of such prison, or alterations made in the construction thereof, during the preceding year. 5 G.4. c.85.

SCHEDULES to which Stat. 4 G. 4. c. 64. refers.

SCHEDULE (A).

List of Districts, Cities, Towns, and Places in *England* and *Wales*, to which this Act shall extend, in addition to Counties at large.

Bristol.	Kingston-upon-Hull.	Norwich.
Canterbury. (a)	Leicester.	Nottingham.
Chester.	*Litchfield*. (a)	Portsmouth.
Coventry.	*Lincoln*. (a)	Worcester.
Exeter.	Liverpool.	York.
Gloucester.	Newcastle-upon-Tyne.	

SCHEDULE (C).

Form of Mortgage and Charge upon the County Rate for securing the Money borrowed.

WE, A. B., *one of his majesty's justices of the peace, and chairman of the court of quarter sessions of the peace holden at* ——— *the* ——— *day of* ———, *for the county*, &c. *of* ——— [as the case may be], C. D., *and* E. F., *esquires, two other of his majesty's justices of the peace acting for the said county*, &c. *and assembled in the said court, in pursuance of the powers to us given by an act passed in the* ——— *year of the reign of his majesty King* George *the fourth, intituled*, &c. [insert the title of this act], *do hereby, in open court, mortgage and charge all the rates to be raised within the said county*, &c. [as the case shall be], *under the description of county rates, by the laws now in being, with the payment of the sum of* ———, *which* G. H. *of* ——— *hath proposed and agreed to lend, and hath now actually advanced and paid towards defraying the expenses of building, repairing*, &c. [as the case shall be], *the gaol, bridewell, or house of correction at* ——— [as the case shall be], *for the said county*, &c.; *and we do hereby confirm the same unto the said* G. H., *his executors, administrators, and assigns, for securing the payment of the sum of* ———, *and interest for the same after the rate of* ——— per centum per annum, *and do order the treasurer for the said county*, &c. *or other person* [as the case shall be], *to pay the interest of the said sum of* ——— *half-yearly, as the same shall become due, until the principal shall be discharged, pursuant to the directions of the said act.*

(a) By stat. 5 G.4. c.85. § 9. so much of stat. 4 G.4. c.64. as relates to the cities of *Canterbury*, *Litchfield*, and *Lincoln*, is repealed.

SCHEDUL

Form of Annual R

1. Number of Prisoners the Prison is capable of containing in separate Sleeping Cells.	2. Number of Prisoners the Prison is capable of containing where more than one Prisoner sleeps in One Cell.	3. Total Number of Prisoners.		4. Number of Debtors.		5. Number of Misdemeanors.		6. Number of Felons.		7. Number of Prisoners committed in the Course of the Year.	8. Number of Tried Prisoners.		9. Number of Untried Prisoners.		10. Number of Prisoners above 17 Yrs. of Age.		11. Number of Prisoners under 17 Yrs. of Age.	
		Mich. 18.	Mich. 18.	Male.	Female.	Male.	Female.	Male.	Female.		Male.	Female.	Male.	Female.	Male.	Female.	Male.	Female.

Note. — The Total of the Columns 4, 5, and Column No. 3.; and the Aggregate of Co

19. — Whether Common Gaol, House of Correction, or Bridewell?

20. — Under whose Jurisdiction and Superintendence?

21. — Number of Officers, and how appointed?

22. — Number of Classes, Wards, or Divisions, Work Rooms, Day Rooms, and Airing Yards, and whether the same can be extended or increased?

23. — Dietary or other Weekly Allowance; and Weekly Cost per Head?

24. — Allowance of Clothing and Bedding, and Cost per Head?

25. — Description of Employment, and Hard Labour?

26. — Hours of Labour and of Exercise?

27. — Amount of Earnings how applied, and in what Proportion to each class of Prisoners, to the Officers of the Prison, and to the Fund applicable to the Maintenance of the said Prison?

28. — Whether the Classification required by this Act has been observed? If not, For what Reasons; and what Measures have been taken to remedy this Defect?

29. — What Duties are performed by the Chaplain, what Provision made for Instruction, and whether Prisoners are supplied with Bibles and other Books?

30. — Attendance of the Surgeon, and whether separate Buildings or Apartments are provided for the Sick?

31. — Reasons for Non-employment of Prisoners, with reference to Column 15.

32. — Reasons for Punishments, by Solitary Confinement, by Whipping, or Irons.

33. — Is there any Insane Prisoner in Confinement?
State his or her Name, Age, and for what Offence committed?
How long has he or she been in Confinement?
How long has he or she been Insane?

34. — General Observations.

tary of State.

	13. Number of Prisoners who have been committed before.				14. Prisoners employed.		15.	16. Punishments for Offences within the the Prison.				17. No. of Solitary Cells and of Apartments below Ground.		18. Cases of Sickness and Death.		
One Time.	Once.	Twice.	Three times.	Four and more.	Hard labour.	Employment not being hard Labour.	Prisoners not employed.	Whippings.	In Irons.	Solitary Confinement.	Other Punishments.	Solitary Cells.	Apartments below Ground.	Cases of Sickness in the Year.	Greatest Number of Sick at one Time.	Deaths.

ıal to the whole Number of Prisoners in the Prison, expressed in the Second Division of the ill be equal to that of Columns 8 and 9, and to that of Columns 10 and 11.

SCHEDULE

SCHEDU

FORM of Annual Re

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		Mich. 18 .	Mich. 18 .	Male.	Female.	Male.	Female.	Male.	Female.		Male.	Female.	Male.	Female.	Male.	Female.	Male.	Female.

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19. — Whether Common Gaol, House of Correction, or Bridewell?

20. — Under whose Jurisdiction and Superintendence?

21. — Number of Officers, and how appointed?

[illegible] Number of Classes, Wards, or Divisions, Work Rooms, Day Rooms, and [illegible]

ıich Stat. 5 G. 4. c. 85. refers.

).

Secretary of State.

12.	13.				14.		15.	16.				17.		18.		
Greatest Number of Prisoners at One Time.	Number of Prisoners who have been committed before.				Prisoners employed.		Prisoners not employed.	Punishments for Offences within the Prisons.				No. of Solitary Cells and of Apartments below Ground.		Cases of Sickness and Death.		
	Once.	Twice.	Three Times.	Four and more.	Hard Labour.	Employment not being hard Labour.		Whippings.	In Irons.	Solitary Confinement.	Other Punishments.	Solitary Cells.	Apartments below Ground.	Cases of Sickness in the Year.	Greatest Number of Sick at one Time.	Deaths.

l be equal to the whole Number of Prisoners in the Prison, expressed in the Second Division of the
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SCHEDULE (B).

The King's Arms.

Certificate, Route, and Description of discharged Prisoners, under the 5th George IV.

CERTIFICATE.

WHEREAS by the act of parliament of the fifth George *fourth, cap.* ., *prisoners discharged from prison may, upon application to the visiting justices of such prison, become entitled to certain allowances from the overseers of the poor of any place through which they may pass on their way to the places of their settlement, under authority of a route and certificate of two such visiting magistrates: And whereas* ——— *corresponding in appearance and the account he* [or *she*] *gives of himself* [or *herself*] *to the description after mentioned, has come before us, two of the visiting justices of the county gaol* [or *house of correction*] *at* ———, *and is deemed by us to be a fit object to receive the regulated allowances under the said act; this is to certify the same, and to require the overseers of the poor of the places mentioned in the route, to issue to the said discharged prisoner the allowance specified in the said route, as required by the said act of parliament: Provided that the discharged prisoner produces the said route himself* [or *herself*] *and that the description corresponds with his* [or *her*] *appearance, and*

SCHEDULE (B)—*continued.*

Route for ——— *from* ——— *in the County of* ———, *to* ——— *in the County of* ———.

A. Names of Places through which the discharged Prisoner is to travel.	B. Rate per Mile for the discharged Prisoner and Children, if any.	C. Distance of Place where Relief is advanced, to that where it is to be continued.	D. Sum paid by each Overseer.	E. Signature of each Overseer paying the discharged Prisoner.	Remarks.
Total Amount paid - - £					

Directions for filling up these Passes.

The magistrate is to fill up the description, and to insert in the column marked A. the names of the places through which the discharged prisoner is to travel; and in the column marked B. (in words) the allowance per mile which he (or she) is to receive; and also to write the number of children in words, in the proper column in the third page; and when there are no children, to strike out that part of the form. In case of any mistake, the magistrate should make the necessary alteration with a pen, and write his name opposite thereto.

The overseer of the poor will insert in the column marked C. the distance of the place to which he advances the allowance; in that marked D. the sum he gives the discharged prisoner; and in that marked E. will sign his own name, specifying the parish for which he acts. He is also to take before a magistrate any person that presents a pass in which there are alterations other than with the pen, as above directed.

Description of the discharged Prisoner.

Prisoner's Name.	His (or her) Age.	His (or her) Height.		Colour of his (or her)			His (or her) Dress.	Number of Children.			
		Feet.	Inches.	Hair.	Eyes.	Complexion.		Boys.	Ages.	Girls.	Ages.

SCHEDULE (B) — *continued.*

Memorandum for the Guidance of the Overseers of the Poor, Treasurers of Counties, and Keepers of Prisons.

Each overseer is to take a receipt from the discharged prisoner, signed with his (or her) name or mark, and he is to be reimbursed the money paid by the treasurer of the county in which he serves the office of overseer, on giving him a receipt for the same, together with the discharged prisoner's receipt. The overseer who makes the last advance to carry the discharged prisoner to his place of residence, is to send the certificate, route, and pass to the keeper of the prison from which the prisoner was discharged; and the said keeper shall make and sign a declaration in the form herein next after annexed; which said declaration shall be attested by one visiting justice of the said prison.

Declaration of the Keeper of the Prison.

I ———, *keeper of the county gaol* [or *keeper of the house of correction or prison*] *at* ———, *in the county of* ———, *do declare that this pass hath come to me without cover* [or *in a cover open at the sides*], *and without any paper or thing enclosed therein, and without any writing other than the matter of such pass, and than the superscription upon the same, or upon the cover thereof.*

(*Signed*) A. B.

I ———, *one of the visiting justices of the said prison, do attest, that after due examination, I do believe the aforesaid declaration to be true.*

Dated this ——— *day of* ———. C. D.

Garments, Assault with intent to spoil. See **Assault.**

has been gotten in; than which notion nothing can be more erroneous. By custom, indeed, such a right may possibly, in some particular places, exist; and the laudable kindness of tenants generally induces them to permit the poor to collect the corn they have left upon the land, and to appropriate it to their own use. As a right, however, it has no more existence than a right to take the tenant's furniture from out of his messuage, and the pillage in the one case is as much felony as the plunder would be in the other: for the act is not simply a trespass, but a felony; and Mr. *Woodfall* says, he very well remembers a conviction at the *Old Bailey*, on an indictment found for the exercise of this supposed right; the parties were tried before Mr. Justice *Rooke*, about six years ago. Indeed, it has been determined, after two solemn arguments, that no such right exists at common law, whatever may possibly be the case on the ground of custom in particular places. *Woodf.* 231. *Steel* v. *Houghton et Ux.* 1 *H. Blac.* 51. *R.* v. *Price*, 4 *Burr.* 1926. 2 *Russ.* 1040.

Gloves, Silk. See **Silk**, vol. v.

Good Behaviour. See **Surety**, vol. v.

Grand Larceny. See **Larceny**, vol. iii.

Greyhound. See **Game**, *ante*.

Gunpowder.

[16 C. 1. c. 21. — 1 J. 2. c. 8. — 12 G. 3. c. 61. — 46 G. 3. c. 121. — 54 G. 3. c. 152. c. 159.]

BY stat. 16 *C.* 1. *c.* 21. (passed in 1640, being the last statute of force in that king's reign,) all subjects may take and sell gunpowder, and bring into the kingdom salt-petre, brimstone, or any other material for the making of it. 16 C. 1. c. 21. Who may make gunpowder.

And by a statute made in the first year of the reign of king *James* the second (which is also somewhat remarkable), it is enacted, that if any person shall obtain a grant for the sole making or importing of gunpowder, he shall incur a præmunire. 1 J. 2. c. 8.

It seemeth, that erecting powder-mills or keeping powder-magazines near a town is a nuisance by the common law; for which an indictment or information will lie. In *R.* v. *Williams*, *E.* 12 *W.* there was an indictment against *Roger Williams*, for keeping 400 barrels of powder near the town of *Bradford*, and he was convicted accordingly. And in *R.* v. *Taylor*, *T.* 15 *G.* 2. 2 *Str.* 1167., the court granted an information against the defendant as for a nuisance, on affidavits of his keeping great quantities of gunpowder near *Maldon* in *Surrey*, to the endangering of the church and houses where he lived. (Or rather, it should have been expressed, to the endangering of the lives of H. M.'s subjects.) Erecting powder-mills near a town, a nuisance.

G.3. c.61. what places ıpowder y be made.

By stat. 12 *G.* 3. *c.* 61. § 1. (which reduces into one and repeals all former acts relating to the making, keeping, and carrying of gunpowder,) No person shall use, or cause to be used, any mill or other engine for making gunpowder in any place, except in mills and other places where the manufacture of gunpowder shall be actually carrying on at the time of the commencement of this act, or where it shall afterwards become lawful to carry on such manufacture by licence for that purpose as hereinafter directed; on pain of forfeiting all gunpowder manufactured otherwise; and 2*s.* for each pound thereof.

ɔ pestle-mill ıll be used in ıking.

§ 2. No person shall, for the making of gunpowder, use any mill or engine worked with a pestle, commonly called a *pestle-mill*; on pain of forfeiting all gunpowder manufactured therein, and 2*s.* for each pound.

'hat quantity ıll be made one time.

§ 3. No person shall, in any mill or engine, make at any one time under any single pair of millstones any quantity of gunpowder, or materials to be made into gunpowder, exceeding 40lbs.; on pain of forfeiting all above 40lbs., and also 2*s.* for each pound.

ıxception of attle-powder.

§ 5. Provided, that nothing in this act shall extend to the powder-mills now erected in the parishes of *Battle*, *Crowhurst*, *Seddlecomb*, and *Brede*, in the county of *Sussex*, so far as relates to the making of such fine fowling gunpowder only, as is known by the name of *Battle-powder*.

Vhat quantity ıall be dried . one time.

§ 6. No person shall dry, or cause, &c. at any one time in any one stove or place, used for the drying of gunpowder, any quantity exceeding 40 cwt.; on pain of forfeiting all above that weight, and 2*s.* for each pound.

Vhat quantity ıall be kept in r near the lace of ıaking.

§ 7. No person shall keep in any corning-house, drying-house, dusting-house, or other place used in making gunpowder, or in any building adjoining or belonging thereto, (except magazines or storehouses constructed with stone or brick, and situate 50 yards at least from the gunpowder-mill,) any greater quantity of gunpowder than shall be necessary for the immediate work then carrying on in such house or other place, on pain of forfeiting all the



zine, or storehouse thereto belonging, shall forfeit 5*l.* for every week during which it shall be so kept. 12 G.S. c.61.

§ 11. No person, being a dealer in gunpowder, shall keep at any one time more than 200 lbs. of gunpowder, and not being such, more than 50 lbs., in any house, mill, magazine, storehouse, warehouse, shop, cellar, yard, wharf, or other building or place occupied by him (all buildings and places adjoining each other being deemed one house within the act), or on any river or other water (except in carriages loading or unloading, or passing on the land, or in ships, boats, or vessels loading or unloading, or passing on any river or other water, or detained there by the tide or bad weather), within the cities of *London* or *Westminster*, or within three miles of either of them; or within any other city, borough, or market-town, or one mile thereof; or within two miles of any palace or houses of residence of the king, or any of the king's gunpowder magazines; or half a mile of any parish church; or in any other part of *G. B.*, except in mills or other places at the commencement of this act used for the making of gunpowder, and in the places where it shall be lawful to make gunpowder, or to keep greater or unlimited quantities of gunpowder by force of this act; on pain of forfeiting all beyond the quantity hereby allowed to be kept, and the barrels in which such shall be, and also 2*s.* for every pound beyond such allowed quantity. With permits gunpowder may be kept.

The general exception in this section (against keeping more than certain quantities of gunpowder in places within certain limits) "or in any other part of *G. B.*," following the specified places, is to be taken as a new division of locality; and if the offence be shown to have been committed within the limits of that general provision, the information need not go on to negative, that it was not within any of the particularly excepted places. *R.* v. *Matters*, 1 *B. & A.* 362.

§ 12. Provided, that it shall be lawful for any person to keep, for the use of any mine or colliery, any quantity not exceeding 300 lbs. weight, in any magazine or warehouse, so as the same be within 200 yards of such mine or colliery, and not within any of the limits hereinbefore particularly described.

§ 13. And whereas it may be necessary to have some places appointed, in which it may be lawful to erect new mills or other engines for making gunpowder, with proper magazines and offices adjoining thereto, and to have magazines for keeping unlimited quantities of gunpowder in places where there are no mills; it shall therefore be lawful for the justices in sessions, from time to time, to license the erecting or having such mills and offices, or such magazines for keeping unlimited quantities in places not being within *London* or *Westminster*, or any other limits herein-before particularly described, the person applying having first given 14 days' notice in writing of the intention to make such application, as also of the place or places proposed for such purposes respectively, to an overseer or churchwarden of the parish or place wherein it is proposed to erect such new mill and offices or magazine, or of an adjoining parish if the place be extra-parochial; which overseer or churchwarden shall cause such notice to be publicly read on the *Sunday* next ensuing in the parish church after divine service. The sessions to license the erecting of mills or magazines.

§ 14. And if the justices in the said sessions shall refuse to grant

2 G.3. c.61. such licence, or to appoint pieces of ground for magazines remote from mills, the party aggrieved may apply to the said justices then present for a special state of the case, and the justices shall certify such case, together with the proofs offered for and against the application, in order that the said case and proceedings may be removed by *certiorari* into the court of K. B.; and the justices in their return to the *certiorari* shall state such special case. And if the court of K. B. shall be of opinion that the justices ought not to have refused such licence or appointment, they shall order the justices to grant, or to make such at their next sessions, and shall award costs on the writ of *certiorari* as they shall think fit.

§ 15. Provided nevertheless, that no person shall be liable to any penalty or prosecution under this act for keeping unlimited quantities of gunpowder without such licence of the justices, in any magazine remote from any gunpowder-mill, and already built and used for that purpose, in any place not being within *London* and *Westminster*, and the other limits herein-before described, until the expiration of six calendar months after an adjudication by the justices that the same is dangerous; and they shall not have power to make such adjudication, except on complaint to them by some householder of the parish or place in which the magazine shall be, and after summons of the owner and examination of witnesses.

§ 16. And the justices in sessions, on application by such maker, may appoint proper and convenient pieces of ground, not being in *London* or *Westminster*, or other the limits aforesaid, and not exceeding one acre in any one place, with the use of convenient roads thereto, on which they may erect magazines, for keeping any quantity after having agreed with the owner for the purchase of the same. And if such owner shall not agree, or by reason of any impediment cannot agree, the justices shall issue a warrant to the sheriff, to impannel and return a jury to appear before them at a time and place appointed in the warrant, who shall upon their



and when conveyed by land shall be entirely closed in a leathern bag, or a bag commonly called a salt-petre bag; and every carriage in which gunpowder shall be conveyed by land shall have a complete covering of wood, painted cloth, tarpaulin, or wadmill tilts over all the gunpowder therein contained: also no gunpowder shall be conveyed in any barge, boat, or other vessel by water (except in vessels for importation or exportation, or going coastwise as aforesaid,) that hath not a close deck; and as soon as any gunpowder is put on board such vessel, all such gunpowder shall be covered with raw hides or tarpaulins. — And all gunpowder carried in greater quantity or in other manner than is herein-before prescribed, and the barrels in which such gunpowder shall be, may be seized by any person, who shall have the same authority to remove such gunpowder and barrels, and for that purpose to use during the space of 24 hours after seizure the carriage or vessel in which such gunpowder shall be seized, and the tackling, beasts, and accoutrements belonging thereto, on paying a recompence for the use thereof, and to detain the same, as is hereinafter given to persons searching under a justice's warrant; and such seizure shall be for his own use on conviction of the offender. 12 G.3. c.61.

In a conviction upon the 18th section of this act it must be shown that the person to whom the gunpowder is adjudged was the person who seized. The justices have no jurisdiction to adjudge the forfeiture, unless upon a seizure; and for this purpose it should be made to appear that there was a seizure and a person seizing. Its being stated in the adjudicating part of a conviction that the gunpowder is forfeited "to the use of G. I., *the person who seized the same*," is insufficient. *R.* v. *Thomas Smith*, *5 M. & S.* 133.

§ 19. And when any barge, boat, or vessel having stale, condemned, or returned gunpowder on board, arrives at the wharf, quay, or other place where the same is intended to be landed, no person shall begin to unload, or shall bring down to such wharf, quay, or other place, with intent to load in such vessel, any other gunpowder, until the whole or part of such stale, condemned, or returned gunpowder be first unloaded and carried away from such wharf, quay, or other place of landing: And after such unloading and carrying away of part of such gunpowder, no person shall begin to load, or shall so bring down with intent to load, any greater quantity of other gunpowder than the part unloaded and carried away; on pain of forfeiting all such gunpowder as shall be so brought down or loaded contrary hereunto.

§ 20. If any person having the care or management of any barge, boat, or other vessel, (except ships for importation, exportation, or going coastwise, as aforesaid,) loaded with gunpowder, or any other person on board the same, shall bring, have, or use or permit, &c. any charcoal, or other combustible matter, or any fire or lighted candle, or shall smoke, or wittingly permit any person to smoke, on board the same, he shall forfeit *5l.* Combustibles not to be kept on shipboard.

§ 21. If any person having the care of any carriage used for the conveyance of gunpowder by land, shall after beginning to load therein any quantity, or beginning to unload the same thereout, stop or stay at any place of loading, or in the loading or unloading suffer any longer time to pass than shall be reasonably necessary for that purpose; or if any person having the care of Gunpowder in carrying not to be delayed.

12 G.3. c.61.

any vessel used for the conveyance of gunpowder by water (except as aforesaid), shall after beginning to load or unload any quantity of gunpowder, stop or stay at any wharf, quay, or other place of loading, or in the loading or unloading thereof suffer any longer time to pass than shall be reasonably necessary for that purpose, not exceeding 18 hours, unless hindered by the weather; or if any person shall take in or carry in such carriage or vessel any other lading of any kind; he shall forfeit 10*l*.

54 G.3. c.152. in part repealing 12 G.3. c.61.

But by stat. 54 *G.* 3. *c.* 152. so much of stat. 12 *G.* 3. *c.* 61. § 21. as enacts, that no person shall load, take in, carry, or convey, in any waggon, cart, or other land-carriage laden with gunpowder, or in any barge, boat, or vessel laden with gunpowder on any river, (except in the case of vessels laden with gunpowder for importation from or exportation to places beyond sea or going coastwise,) any other lading of any kind whatsoever, is repealed.

12 G.3. c.61.

Stat. 12 *G.* 3. *c.* 61. § 22. Provides, that none of the aforesaid provisions concerning the conveying, loading, or unloading, 12 *G.* 3. *c.* 61. shall extend to any other carriage or vessel than such as shall carry a quantity of gunpowder exceeding 1 cwt.

Power of the justices to search.

§ 23. And any justice, on demand made and reasonable cause assigned upon oath, may issue his warrant for searching, in the day-time, any house, mill, magazine, storehouse, warehouse, shop, cellar, yard, wharf, or other place, or any carriage, ship, boat, or vessel, in which such gunpowder is suspected to be made, kept, or carried contrary to this act; and all gunpowder found on such search to be made, &c. contrary to this act, and also the barrels, shall be immediately seized by the searcher, who shall with all convenient speed remove the same to such proper place as he shall think fit; and in case of gunpowder seized in any carriage or vessel, may use for the purpose of removal, during the space of twenty-four hours after seizure, such carriage or vessel, with the tackling, beasts, and accoutrements belonging thereto, (paying afterwards to the owner a sufficient recompence for the use thereof,

[redacted]

same powers of seizing, removing to proper places, and retaining all such gunpowder and barrels, as are herein-before given to persons searching by a justice's warrant. 12 G.3. c.61.

§ 26. All penalties on this act shall be recoverable before two justices, on conviction of the offender by confession, or oath of one witness, and be distributed, half to the king, and half to the informer; and where the penalty is pecuniary, it shall be levied by distress and sale, rendering the overplus, after deducting the penalty and expenses; and for want of sufficient distress, the offender shall be committed to the house of correction, to be kept to hard labour not exceeding six months, nor less than three. Penalties how to be recovered.

§ 27. Prosecution to be commenced within fourteen days after seizure of the gunpowder, or commission of the offence where there shall not be any seizure.

§ 29. Provided that this act shall not extend to any mills or other buildings erected for making gunpowder in any lands belonging to H. M., or to the keeping of gunpowder at any of H. M.'s storehouses or magazines, or to hinder the trial of gunpowder by H. M.'s officers, or to the keeping of gunpowder at the magazines now erected at *Barking Creeksmouth* in the county of *Essex*, *Erith Level* in the county of *Kent*, or the magazines near *Liverpool*, or the city of *Bristol*, or to the carriage of gunpowder to or from the king's magazines, under a special order from the board of ordnance, or to the carriage of gunpowder with forces on their march, or with the militia during their annual exercise, or which shall be sent for the use of such forces or militia. General exception.

§ 30. Also, this act shall not extend to hinder any person from carrying an unlimited quantity of gunpowder in such close-decked vessels and in such manner as is herein-before directed, from any vessels lying below *Blackwall*, or from such magazines lying below *Blackwall*, and going to any place beyond sea or coastwise.

By stat. 54 G. 3. c. 159. § 6. The lord high admiral, or three commissioners for executing the office of lord high admiral, may order at what place or places, within or near any ports, harbours, bays, navigable rivers, &c. in this kingdom, no private ships of war, transports, &c. shall come having on board any quantity of gunpowder, exceeding 5 lbs. weight, and also appoint proper places where all gunpowder, exceeding 5 lbs. weight, shall be deposited; and the master-general of H. M.'s ordnance shall appoint proper persons to take in and deliver out all such gunpowder. 54 G.3. c.159.

Guns. See Game, *ante*.

Habeas Corpus. See Bail, vol. i.

Hackney Coaches, Chariots, &c.

[9 Ann. c. 23. — 10 Ann. c. 19. — 1 G. 1. st. 2. c. 57. — 4 G. 3. c. 36. — 7 G. 3. c. 44. — 10 G. 3. c. 44. — 11 G. 3. c. 24. — 11 G. 3. c. 28. — 12 G. 3. c. 49. — 24 G. 3. sess. 2. c. 27. — 26 G. 3. c. 72. — 32 G. 3. c. 62. — 39 & 40 G. 3. c. 47. — 42 G. 3. c. 78. — 48 G. 3. c. 87. — 54 G. 3. c. 147. — 55 G. 3. c. 159. — 57 G. 3. c. 125.]

9 Ann. c. 23. Commissioners.

BY stat. 9 *Ann. c.* 23. § 1. the king may appoint five commissioners for regulating hackney coaches within the bills of mortality.

Licensing and duty.

Which commissioners shall, under hand and seal, license hackney coaches within the cities of *London* and *Westminster* and suburbs thereof, and other places within the bills of mortality, not exceeding 1000, (and by stat. 42 *G.* 3. *c.* 78. 100 additional); and on every licence shall be reserved 5*s.* a week, (and by stat. 24 *G.* 3. *sess.* 2. *c.* 27. § 1. an additional duty of 5*s.* a week,) to be paid monthly.

And by stat. 9 *Ann. c.* 23. § 3. 10 *Ann. c.* 19. § 158. 12 *G.* 1. *c.* 12. § 15. They shall also license hackney chairs within the said liberties, not exceeding 400; reserving a rent of 10*s.* a year, to be paid quarterly.

54 G. 3. c. 147. Number of hackney-coaches and chariots.

By stat. 54 *G.* 3. *c.* 147. § 15. The commissioners are empowered to license 1100 hackney carriages, of which 200 may be chariots and the remainder *coaches*.

55 G. 3. c. 159. Two hundred additional chariots may be

And by stat. 55 *G.* 3. *c.* 159. § 2. The said commissioners are empowered, with the consent of the lords of H. M.'s treasury, or any three of them, to license 200 hackney chariots, in addition to the number allowed by 54 *G.* 3. *c.* 147. § 15.

§ 4. The said commissioners are authorised, with the consent

in the discretion of the major part of the said commissioners; one half of which penalty shall go to H. M., and the other half to the informer, to be levied and recovered as any penalty may be levied and recovered under any act of parliament relating to hackney coaches; or otherwise it shall be lawful for the major part of the said commissioners to revoke the licence of the person so offending. 57 G.3. c.125.

By stat. 9 *Ann.* c. 23. § 4. Every coach and chair shall have a distinct mark on each side; and if any shall alter such mark, he shall forfeit 5*l.*, half to the informer, and half to the king. 9 Ann. c.23. Mark.

By stat. 39 & 40 *G.* 3. c. 47. § 4. The commissioners shall appoint persons to inspect licensed hackney coaches and the horses: such inspection to take place four times at least in each year, and also as often as commissioners shall appoint, the report of the same as to their state and condition to be made to the commissioners. The commissioners may suspend the licence where the coach shall be found defective as to repair, safety, or cleanliness, or the horses unfit or insufficient, till the same be rectified. 39 & 40 G.3. c.47. Inspection.

By stat. 55 *G.* 3. c. 159. § 7. It shall be lawful for the commissioners to regulate the number and mode of distinction to be adopted by each coach and chariot; and every owner who shall neglect to comply therewith shall be subject to the revocation of his licence, or shall forfeit any sum not exceeding 10*l.*, at the discretion of the commissioners; and in case of nonpayment, the same may be levied by distress. 55 G.3. c.159. Regulation of numbering.

By stat. 9 *Ann.* c. 23. § 4. No person shall drive or let to hire any hackney coach without licence, on pain of 5*l.*; nor shall carry any person for hire in a hackney chair, without licence, on pain of 40*s.* in like manner. 9 Ann. c.23. Penalty of driving without licence.

Cloud v. *Turfery and Abbott*, *C. P.* 2 *Bing.* 318. *Mich.* 1824. Trespass to recover damages for the seizure and detention of a coach and two horses. Plea, general issue. At the trial before *Dallas* C. J. at *Westminster* sittings after *Mich. Term* 1820, the jury found a verdict for the plaintiff, damages 12*l.*, subject to the opinion of the court upon the following case: — The plaintiff was the owner of a stage-coach duly licensed by the commissioners of stamps to carry passengers between *London* and *Hammersmith*: and the defendant *Turfery* was a messenger to the commissioners for licensing and regulating hackney coaches. On the 21st of *April* 1820, the driver of the plaintiff's coach took up in *St. Paul's* church-yard, from which place the coach sets out in *London* to proceed towards *Hammersmith*, one *Lindsay*, who resided in *Queen-street*, *May-fair*, and who had previously, at the coach-office of the plaintiff, booked his place and paid his fare for the whole distance to *Kensington*. When the coach arrived at *Hyde Park Corner*, *Lindsay* desired to be set down, and was set down accordingly. He had not previously made known to the driver of the coach his intention of proceeding no further than *Hyde Park Corner* on that day; but he had on former days been set down in like manner, always booking a place and paying the full fare to *Kensington*. On the following day the driver in like manner conveyed the same person under precisely the same circumstances. The plaintiff's coachman who so drove *Lindsay*, had been previously warned by the commissioners for regulating hackney

Stat. 9 Ann. c.23. § 4. inflicts a penalty on any person who shall drive or let to hire any hackney-coach or coach-horses in the cities of London or Westminster without a licence from the commissioners of hackney-coaches.

Stat. 1 G.1. c.57. § 1. inflicts a penalty on any person who shall drive for hire in the same cities with any coach whatsoever, hearse or coach-horses, except such person be licensed by the

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Commissioners of hackney-coaches:

Held, that a conviction was insufficient which charged the party with driving and letting to hire in the said cities a certain coach and two coach-horses, and also with driving to hire a certain coach and two coach-horses, and conveying a person in the said coach for hire.

Form of conviction.

coaches, that he was acting illegally in conveying *Lindsay* as well as others from place to place within the paved streets. On the 17th of *June* 1820, the defendant *Turfery*, under and by virtue of two warrants of distress respectively under the hands and seals of the commissioners for licensing and regulating hackney coaches, and bearing date respectively the 16th of *June* 1820, seized and levied as distress for certain penalties under two convictions, a coach and two horses belonging to the plaintiff, and drove them to and left them at the stable-yard of the defendant *Abbott*, in *Drury Lane*; where they were detained by *Abbott* until the plaintiff, to repossess himself thereof, was obliged to pay to the defendants the amount of the two penalties claimed, *viz.* 10*l.*, together with 1*l.* 2*s.* as costs of the said warrants of distress. The defendants, under the general issue, gave in evidence two convictions precisely similar to each other, except that in the first the offence was laid on the 21st of *April* 1820, and in the second it was laid on the 22d of *April* 1820. The following is a copy of the first of the convictions:—"Be it remembered, that on the 12th day of *May*, in the first year of the reign of our sovereign lord *George* the fourth, by the grace, &c., in *Essex Street*, in the parish of *St. Clements Danes*, in the county of *Middlesex*, *Sarah Ann Quaife*, of *Essex Street* aforesaid, cometh in her proper person before us, the major part of the commissioners nominated and appointed by his majesty's commissioners under the great seal of *Great Britain* for the licensing and regulating hackney coaches and chairs: and now here giveth us the said commissioners to understand, that one *George Cloud* of *Hammersmith*, in the county of *Middlesex*, coach-master, heretofore, to wit, on the 21st day of *April*, in the year of our Lord, 1820, and in the first year of the reign of his said majesty, the said *George Cloud*, not then and there being licensed by the commissioners aforesaid or the major part of them so to do, did *drive and let to hire* a certain *coach* and divers, to wit, two *coach-horses*,



and ought not to be convicted thereof, but doth not show to us why the said *George Cloud* should not be convicted of the offence in the said information above contained against him: And further, at the said time and place, (that is to say,) at *Essex Street* aforesaid, one credible witness, to wit, *John Gibbs*, of the parish of *Lambeth*, in the county of *Surrey*, yeoman, came before us, and in the presence of the said *Richard Cloud*, who appeared as aforesaid on behalf of the said *George Cloud*, the said *John Gibbs* upon his oath, on the holy Gospel of *God* to him then and there by us administered, (we being duly authorised and empowered to administer the said oath,) deposeth and saith, that a driver of the said coach, in the employ of the said *George Cloud*, on the said 21st day of *April* in the year aforesaid, did *drive to hire* a certain *coach* and *two coach-horses* from *St. Paul*'s church-yard, in the parish of *St. Faith* aforesaid, in the city of *London* aforesaid, to *Piccadilly* in the parish of *St. George, Hanover Square*, within the liberty of the city of *Westminster* aforesaid, in the county aforesaid, the same places then and there respectively as aforesaid being within or on the paved streets of *London* and *Westminster* as aforesaid; and that the said *John Gibbs* then and there saw the driver of the said coach of the said *George Cloud* take up in the said coach, which he was then and there driving, at *St. Paul*'s church-yard aforesaid, in the parish of *St. Faith* aforesaid, in the city of *London* aforesaid, a certain person whose name is as yet unknown; and that the said driver of the said coach of the said *George Cloud*, then and there carried and conveyed the said person in the said coach for hire from *St. Paul*'s church-yard aforesaid, in the parish of *St. Faith* aforesaid, in the city of *London* aforesaid, to *Piccadilly* aforesaid, in the parish of *St. George, Hanover Square*, in the liberty of the city of *Westminster* aforesaid, in the said county, and upon hearing and duly examining the whole matters aforesaid, it manifestly appeareth to us, that the said *George Cloud* is not licensed by us, and that he is guilty of the premises above charged upon him in and by the information aforesaid; therefore the said *George Cloud*, on the said 12th day of *May* in the first year aforesaid, before us the commissioners aforesaid, by the testimony of the said *John Gibbs*, a credible witness as aforesaid, according to the form of the statutes in such case made and provided, is convicted of the offence aforesaid, and hath forfeited the sum of 5*l.* of lawful money of *Great Britain*, to be distributed as the law directs. In witness whereof, we the said commissioners to this present record of conviction, have set our hands and seals at *Essex Street* aforesaid, in the county aforesaid, the said 12th day of *May*, in the said first year of the reign of our said lord the king that now is."—The question for the opinion of the court was, "Whether the plaintiff was entitled to recover? If the court should be of that opinion, the verdict was to stand; but if the court should be of the contrary opinion, a nonsuit was to be entered."—Counsel for plaintiff were stopped by the court.

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Argument for the defendants. The plaintiff has clearly been guilty of an offence under stat. 9 *Ann. c.* 23. § 4., and 1 *G.* 1. *c.* 57. § 1. By the first of those statutes a monopoly was given to the licensed owners of hackney coaches within the cities of *London* and *Westminter*, upon the considerations of a certain rent, certain regulated fares, and various rules, bye-laws, and penalties to

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which they were subjected; it would therefore be a great injustice if they were exposed to the competition of other coaches.—[*Gazelee* J. Before you are let in to argue the merits, you must support the conviction. The thing prohibited by 9 *Ann.* is the driving or letting to hire any hackney coach without being duly licensed; but the conviction no where states that the plaintiff drove or let to hire a hackney coach.] Within the spirit of that act, and for the necessary protection of hackney coach owners, any coach must be deemed a hackney coach in which the driver conveys persons from street to street for hire, and this the driver appears to have done in the plaintiff's coach; besides, he is alleged to have let to hire two coach-horses, which the act also prohibits: but by 1 *G.* 1. he is liable to a penalty if he drives for hire with any coach whatever, unless previously licensed by the hackney coach commissioners.—[*Burrough* J. The information alleges, that the driver of the plaintiff did drive *to* hire a certain coach, and conveyed a person in the coach for hire, instead of alleging, according to the words of the act, that he drove *for* hire *with* a coach.] It is clear, from the whole case, that the plaintiff knew he was infringing the rights of the hackney coachmen, and in an action like the present the court will decide on the merits of the case, and not on the technical language of the conviction. Stat. *55 G.* 3. *c.* 185. § 11, 12. only allows the drivers of stages to take up passengers in the streets for the places of their ultimate destination.—*Per Best* C. J. If the conviction is not strictly regular, and our judgment is to go against the plaintiff, a man may be punished who is in law unconvicted of any offence. He may have done that which has rendered him liable to a conviction; but unless that conviction is legally and regularly obtained, execution must not ensue. Now the conviction, to be good, must pursue not only the words but the spirit of the act of parliament. This has not been done in the present instance, either with reference to the statute of *Anne* or that of *G.* 1. The fact is, as it has been stated, that licensed hackney coachmen were allowed to claim a preference

§ 4. No horse to be used with any hackney coach shall be under 14 hands high. Size of the horses.

By stat. 48 *G.* 3. *c.* 87. The former fares on hackney coaches are repealed; and by schedules (A) (B), other fares are to be taken in lieu thereof. 48 G.3. c.87. Fares.

By § 1. Hackney coachmen may demand and take for the hire of any hackney coach the rates and fares described in either of the schedules (A) or (B) to this act annexed, calculating either according to time or distance as such coachman may please.

By § 2. The fares shall be calculated only by the hour or mile, and not by the day. How to be calculated.

By § 3. Reciting that whereas the period of sunset has been liable to dispute, it is enacted, that hackney coachmen shall be compellable to go on every day of the week, after 8 in the evening between *Lady Day* and *Michaelmas Day*, and after 5 in the evening between *Michaelmas Day* and *Lady Day*, the distances and under the circumstances mentioned in stats. 32 *G.* 3. *c.* 47. and 39 & 40 *G.* 3. *c.* 47. Hackney-coaches to go the distances specified in 32 G.3. c.47. and 39 & 40 G.3. c.47. within the periods specified.

By stat. 55 *G.* 3. *c.* 159. § 5. After repealing so much of stat. 48 *G.* 3. *c.* 87. as relates to additional fares when hackney coaches are driven into the country, it is enacted, "that from henceforth the several additional fares after-mentioned shall be payable and paid; that is to say, in case any hackney coach or chariot shall be hired in any part of the cities of *London* and *Westminster*, or the suburbs thereof, the borough of *Southwark*, or any place adjoining thereto, where there is a regular continuation of carriage-way pavement, or at any standing for hackney coaches or chariots beyond any such regular continuation of carriage-way pavement, and discharged after the hour of seven in the evening, between the periods of *Michaelmas Day* and *Lady Day*, and after the hour of nine in the evening between the periods of *Lady Day* and *Michaelmas Day*, at any place where there is not a regular continuation of carriage-way pavement as aforesaid, there shall or may be demanded over and above the ordinary and established fare, the full rate or fare allowed by the said recited act, to the nearest extremity of continued carriage-way pavement, or to any standing for hackney-coaches or chariots beyond any such regular continuation of carriage-way pavement, where such coach or chariot shall have been hired, at the option of the person discharging such coach or chariot; and in case any hackney coach or chariot shall be hired and driven into the country, and then discharged in the day-time, and not after the hours herein-before respectively mentioned, there shall or may be demanded, for the return thereof to the nearest extremity of continued carriage-way pavement, or to any standing for hackney coaches or chariots beyond any such regular continuation of carriage-way pavement where such coach or chariot shall have been hired, at the option of the person discharging such coach or chariot, for each and every mile above the number of four miles, the additional rate or fare of sixpence: Provided nevertheless, that no such allowance for return shall be made for any lesser distance than four miles, calculated as aforesaid." 55 G.3. c.159. So much of 48 G. 3. c. 87. as relates to additional fares when driven into the country, repealed; and other fares substituted.

By stat. 39 & 40 *G.* 3. *c.* 47. § 2, 3. When the average price of oats computed according to stat. 31 *G.* 3. *c.* 30. shall exceed 25*s.* 39 & 40 G.3. c.47.

9 & 40 G.3. c.47.

per quarter, the commissioners for licensing hackney coaches may allow additional fares to be taken, viz. 6*d.* on every 2*s.* fare; 1*d.* on every 4*s.* fare, and so in like manner, 6*d.* additional on every additional 2*s.*, provided the coach goes or is kept to the full amount of the fare; and such additional rates may be continued till 30 days after oats are reduced to one guinea *per* quarter.

Additional fares allowed according to the price of oats.

G.3. c.44. Limitation of distance.

By stat. 7 *G.* 3. *c.* 44. § 12. 12 *G.* 3. *c.* 19. § 1. Every licensed coachman, plying for hire within the cities of *London* and *Westminster*, or the suburbs thereof, or elsewhere within the bills of mortality, shall be obliged and compellable, on every day of the week, at seasonable times, to go any where within the distance of ten miles from either of the said cities.

48 G.3. c.87. Plying for hire when returning to town.

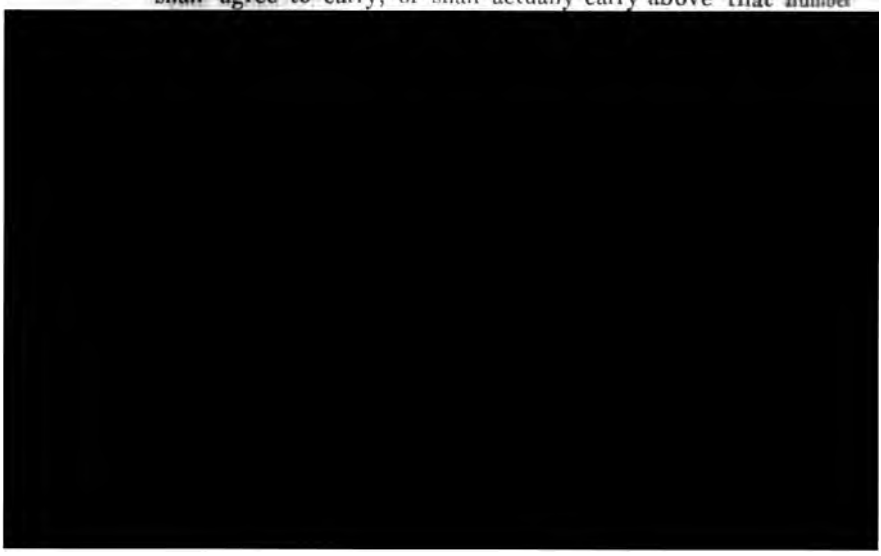
By stat. 48 *G.* 3. *c.* 87. § 5. Every hackney coachman, discharged in the country, and plying for and picking up promiscuous passengers, thereby converting their hackney coaches into stages, shall for every such offence incur a penalty of not exceeding 3*l.* nor less than 20*s.*

Number of persons to be carried inside and out.

By § 6. No such coachman shall be compellable to carry more than four adult persons inside, and a servant outside, at one time: and shall have 1*s.* above the regular fare for every additional adult person over that number; and if he shall drive into the country, and there wait, and return with any additional adult person, whom he shall agree to carry, and shall carry, and after waiting return with, he shall have 1*s.* for going, and 1*s.* for returning above his regular fare.

54 G.3. c.147. Number of persons to be carried in coaches.

And by stat. 54 *G.* 3. *c.* 147. § 14. After reciting stat. 48 *G.* 3. *c.* 87. § 6., and that doubts have arisen as to what shall be termed an agreement to carry, and also as to the word *adult* in the said act; it is enacted, that every hackney coachman may refuse to carry more than four adult or grown up persons (and not being children in arms or lap) in his coach, and a servant outside, at one and the same time, and shall not at any time be compellable to carry above that number of such persons; but if he shall agree to carry, or shall actually carry above that number



And by § 4. No owner or driver of any two-wheeled carriage shall be compellable to carry more than two persons. 55 G.3. c.159. In two-wheeled carriages.

By stat. 48 *G.* 3. *c.* 87. § 7. If a driver be directed to wait at places of public resort, he shall receive of those so directing him a reasonable sum in hand above the fare for driving thither, the sum so received to be accounted for when such coach shall be finally discharged. 48 G.3. c.87. Waiting at public places.

By stat. *55 G.* 3. *c.* 159. § 11. In case any driver of any hackney coach or chariot shall leave his coach or chariot at any theatre or other place of public resort or entertainment unattended, whether he shall be hired or not, it shall be lawful for any inspector of hackney coaches, officer of police, constable, or other peace officer, watchman, or patrol, to drive away such coach or chariot, and deposit the same at the nearest place of deposit; and the driver of such hackney coach shall be subject and liable to a penalty not exceeding five pounds, to be levied, in case of nonpayment, by distress upon the goods and chattels of the offender. 55 G.3. c.159. Punishing hackney coachmen for leaving their coach unattended.

But by stat. 12 *G.* 3. *c.* 49. § 2. No person, who shall regularly use such hackney coach as a *stage coach* to and from any of the towns or places in the neighbourhood of *London* or *Westminster*, shall be obliged to carry any fare out of the ordinary course of his stage work or duty: Provided that he do by painting in legible characters on the door of such coach, or on a board to be affixed on such door, plainly denote and distinguish the same to be a stage coach to and from any such town or place. 12 G.3. c.49. Using a hackney coach as a stage coach.

By stat. 11 *G.* 3. *c.* 28. § 2. The commissioners shall order the several persons who take out licences for hackney coaches that they provide check-strings or wire to be placed in such convenient part of every such coach as to the said commissioners shall seem meet; and every hackney coachman, plying for hire without such check-string or wire, shall forfeit *5s.*, to be recovered as other penalties by any law relating to hackney coaches. 11 G.3. c.28. Drivers to have check-strings.

By stat. 1 *G.* 1. *st.* 2. *c.* 57. § 3. No unlicensed person shall ply with any coach or hearse, or shall let to hire, any mourning-coach within the liberties aforesaid, on pain of *5l.* as for driving unlicensed. 1 G.1. st.2. c.57. Mourning-coaches.

By stat. 24 *G.* 3. *st.* 2. *c.* 27. § 7. If any person shall drive a mourning coach or hearse to a funeral within the cities of *London* or *Westminster*, or the suburbs thereof, or elsewhere within the bills of mortality, or within five miles of *Temple Bar*, without having a number fixed on the fore standard, showing it to be licensed, he shall forfeit *5l.*: And on information given to the commissioners, they may summon the driver thereof, and although no express hiring shall be proved, it shall be adjudged a driving for hire. 24 G.3. st.2. c.27.

§ 8. No person shall drive any cart, car, dray, or other such like carriage, within the limits aforesaid, or within the borough of *Southwark*, except the owner thereof shall have entered his name and place of abode with the said commissioners; and also caused his name, and the number of such carriage, to be put upon some conspicous part thereof: And in case of neglect or refusal, every such owner or driver of such carriage, so residing and driving within the limits aforesaid, shall be liable to all the penalties and forfeitures created by any laws now in being relative to the owners or drivers of such like carriages. Carts, &c. within the bills.

But in *R.* v. *Powell*, 4 *T. R.* 572., it was determined that the owner of a cart, who does not *reside* within the bills of mortality, or within five miles of *Temple Bar*, need not enter his name and place of abode with the commissioners of hackney coaches, or have his name, or any number upon the cart, though it be driven within those limits.

7 G.3. c.44. Rates for chairs.

And by stat. 7 *G.* 3. *c.* 44. § 13. A chairman may take for any distance not exceeding one mile, 12*d.*: for any distance above one mile and not exceeding one mile and four furlongs, 1*s.* 6*d.*; for every further distance not exceeding four furlongs, 6*d.*; and by the hour 18*d.* for the first hour, and 6*d.* for every half hour after.

9 Ann. c.23. 1 G.1. st.2. c.57. Bye-laws.

And by stat. 9 *Ann.* *c.* 23. § 16, 17. — 1 *G.* 1. *st.* 2. *c.* 57. § 1. The commissioners may make bye-laws, to bind all persons licensed, and the renters of such licences, and the drivers. The same to be approved by the lord chancellor, commissioners of the great seal, two chief justices, and chief baron, or three of them.

1 G.1. st.2. c.57. Drivers refusing to go, or overcharging.

By stat. 1 *G.* 1. *st.* 2. *c.* 57. § 2. If any hackney coachman shall refuse to go at or exact more for his hire than according to the above act or bye-laws, he shall forfeit a sum not exceeding 3*l.* nor under 10*s.*

48 G.3. c.87. Exacting more than their fare.

By stat. 48 *G.* 3. *c.* 87. § 11. Hackney coachmen exacting more than their fare shall be liable to the penalties, and their fares shall be recoverable as under former acts.

39 & 40 G.3. c.47. Coachmen compellable to go.

And by stat. 39 & 40 *G.* 3. *c.* 47. § 5. Every hackney coachman where coaches are standing shall be compellable to go with any person when desired, and on refusal (unless he prove being hired) shall be liable to the like penalties as persons refusing to carry for hire, by any law now in being.

9 Ann. c.23. Misbehaviour of coachmen or chairmen.

By stat. 9 *Ann.* *c.* 23. § 44. If any person who shall drive a coach or carry a chair for hire, acting under a person licensed, shall be guilty of misbehaviour, by demanding more than his fare, or

§ 14. Every driver of any hackney coach or chariot, or any chairman or waterman, who shall make use of any abusive or insulting language, or other rude behaviour, or who shall obstruct any inspector of hackney coaches, officer of police, constable, or other peace officer, watchman, or patrol, in the execution of his duty, and who shall on complaint being made before any justice of the peace, or the commissioners of the hackney coaches, or the major part of them, be convicted of the same, shall be subject and liable to a penalty, at the discretion of such justice or commissioners, not in any case exceeding 10*l.*, and in default of payment to be committed to prison for a period not exceeding two months. 55 G.3. c.159. Punishing drivers of hackney coaches, chairmen, or watermen, for using abusive language, or obstructing police officers, &c.

By stat. 7 *G.* 3. *c.* 44. § 15. In every case where any person for any offence mentioned in any law relating to the licensing and regulating of hackney coaches and chairs shall be liable to be committed to prison, it shall be lawful for the commissioners, or any three or more of them, either to commit such offender to prison as by any former act and for any time not exceeding one month, or to commit such offender to *Bridewell* or other house of correction, there to be kept to hard labour for any time not exceeding one month, and also to receive the correction of the house. 7 G.3. c.44.

By stat. 10 *G.* 3. *c.* 44. § 5. In all cases where they may commit offenders to *Bridewell* or other house of correction as aforesaid, they may commit them immediately upon such offenders being convicted before them. 10 G.3. c.44.

By stat. 9 *Ann. c.* 23. § 22, 23. If any person shall refuse to pay, or shall deface any coach or chair, any justice may grant his warrant to bring him before him; and on proof upon oath may award satisfaction to the party, and on refusal to pay, may bind him over to the next sessions, who may determine the same. 9 Ann. c.23. Persons refusing to pay.

And by stat. *55 G.* 3. *c.* 159. § 6. After reciting that whereas by the laws now in force "authority is given to justices of the peace to award satisfaction, in case of persons refusing or omitting to pay to coachmen or chairmen the money due for the hire of their coaches, or wilfully injuring such coaches or chairs, and to issue their warrants for bringing such persons before them, but no authority is given to enforce the payment of such satisfaction so awarded, and it is expedient that such authority should be given; it is enacted, that if any person shall refuse or omit to pay the driver of any hackney coach or chariot, or any chairman, the money justly due to him for the hire of the coach or chariot or chair hired, or shall wilfully deface or in any manner injure the same, it shall and may be lawful for any justice of the peace upon complaint thereof to grant a summons, or if it shall appear to him necessary, a warrant for bringing before him the offending party or parties, and upon proof made upon oath, to award reasonable satisfaction to the party so complaining for his damage and costs, and also a reasonable compensation for the loss of time on his attendance in establishing such complaint; and upon refusal to pay or make such satisfaction, to commit such person or persons to prison, there to remain for any time not exceeding one month, or until the amount of such satisfaction shall be paid and discharged." 55 G.3. c.159. Where persons refuse to pay the driver his fare, or wilfully injure such coaches, &c. justices may grant summons or warrant.

5 G. 3. c. 159. Agreement to pay more than established fare not binding.

§ 10. "No agreement or engagement whatever, at any time or on any occasion, made with the driver of any hackney coach or chariot, for the payment of more than his established fare, shall be binding on the person or persons making the same; but any such person or persons may, notwithstanding any such agreement or engagement, refuse, on discharging such coach or chariot, the payment of any sum beyond the established fare; and in case such person or persons shall actually pay to the driver of any hackney coach or chariot, whether in pursuance of any such agreement or engagement or not, any sum exceeding his established fare, which shall have been demanded or required by such driver, the person or persons paying the same shall be entitled, on complaint against such driver, to recover the overplus paid; and such driver shall be subject and liable to a penalty not exceeding 5*l.*, to be levied in case of nonpayment by distress upon the goods and chattels of the offender."

Penalty.

57 G. 3. c. 125. Coachman not to charge more than the sum agreed for, though he exceeds the distance.

But by stat. 57 *G.* 3. *c.* 125. § 3. "It shall be lawful for any person to require any hackney coachman to drive for a stated sum of money a distance in the discretion of such hackney coachman; and in case such coachman shall exceed the distance to which such person was entitled to be driven for such stated sum of money, the coachman shall not be entitled to demand more than the sum for which he was so engaged to drive."

48 G. 3. c. 87. Compensation to be paid to hackney coachmen improperly summoned.

By stat. 48 *G.* 3. *c.* 87. § 8. Whereas by the laws now in force, hackney coachmen are not obliged to go with persons desirous of hiring their coaches, provided they have been out 12 hours; and whereas they have been oftentimes improperly summoned for refusal; it is enacted, that every hackney coachman who shall in civil and explicit terms declare to any person desirous to engage his coach, either that he hath been at work 12 hours with his coach and horses, or that he is actually hired, and shall afterwards be summoned for refusal, and shall prove that he had been so at work, or so *bona fide* hired, and it shall not appear that he conducted himself improperly to the party summoning, he shall not

the persons respectively, who shall prove to the satisfaction of the commissioners that the same belonged to him or her, such person previously paying all expenses incurred, together with such reasonable sum to the driver as with reference to their value the commissioners shall award. Provided, that if such property shall not be proved to belong to some person within one year, the same having been advertised in such way as shall have been directed by the commissioners, such property shall be sold, and after deducting the expenses incurred from the produce, the balance shall be paid to the driver who deposited the same.

By stat. 26 *G.* 3. *c.* 72. § 3. If any hackney coachman or his renter, shall be in arrear for any rent made payable by his licence for any longer time than is expressed therein, the said commissioners may revoke such licence, and levy the money upon the goods of either the owner or renter, in like manner and form as by any law now in being with respect to the owner. 26 G.3. c.72.

By stat. 9 *Ann. c.* 23. § 12. The rents and penalties to be levied by distress, by warrant of three commissioners; which distress shall be sold in ten days, returning the overplus, charges of the distress and of the warrant being first deducted (if on seven days' notice they do not pay the fine without such warrant); and in default of distress, to be imprisoned till paid; and if any rent shall be unpaid for 14 days, the commissioners may withdraw the licence. 9 Ann. c.23. Rents and penalties may be levied by distress.

And moreover by stats. 9 *Ann. c.* 23. § 17.—1 *G.* 1. *st.* 2. *c.* 57. § 7.—4 *G.* 3. *c.* 36.—7 *G.* 3. *c.* 44. § 19.—10 *G.* 3. *c.* 44. § 7. the breach of the bye-laws and of these rules and orders may be punished by any justice of the peace, mayor, bailiff, or other magistrate where the offence shall be committed, in like manner as by the commissioners.

And by stat. 55 *G.* 3. *c.* 159. § 8. Upon any complaint of the owner of any hackney coach or chariot licensed by the commissioners, against his or her driver, or of a driver against his master, it shall be lawful for the said commissioners, or the major part of them, to enquire into the same, and to determine thereon, and to award such compensation to be made as to them respectively shall seem proper, and to punish any such owner or driver by inflicting any penalty not exceeding 10*l.*; and in case of nonpayment, the same may be levied by distress on his, her, or their goods and chattels. 55 G. 3. c. 159. Commissioners to hear and determine complaints between owners and drivers of hackney coaches.

And by stat. 10 *G.* 3. *c.* 44. § 6. Every licensed person who shall neglect or refuse (being duly summoned for that purpose) to appear by himself or his renter, shall forfeit 10*s.*, to be recovered as the other penalties; and if such licensed person shall neglect or refuse to appear, together with his renter, upon the third summons, the complaint may be heard and determined in his absence. 10 G.3. c.44.

By stat. 24 *G.* 3. *sess.* 2. *c.* 27. § 3. If any owner of a licensed hackney coach shall refuse or neglect to appear with his driver before the commissioners upon the third summons left at his usual place of abode, the said commissioners may revoke such licence, and license another person in his room. 24 G.3. sess.2. c.27.

By stat. 10 *G.* 3. *c.* 44. § 8. All penalties levied by any justice, mayor, bailiff, or other magistrate, shall by them be transmitted to the receiver-general of the duties on hackney coaches and chairs, and they shall also transmit a certificate thereof to the commis- 10 G.3. c.44.

sioners within ten days after levying such penalty, on pain of 10*l.*, half to the king and half to him that shall sue.

55 G.3. c.159. Application of penalties.

By stat. 55 *G.* 3. *c.* 159. § 15. All penalties to be recovered under this or any former act relating to hackney coaches, shall be applied, one moiety thereof to H. M., and the other moiety to the informer.

§ 16. The penalties and provisions of former acts are continued in force.

32 G.3. c.62. No coach to ply for hire in New or Old Bond Street.

By stat. 32 *G.* 3. *c.* 62. § 23. No person shall stand and ply for hire with any hackney coach within either *New* or *Old Bond Street*, in the parish of *St. George, Hanover Square*; and if any person shall drive, stand with, and ply for hire with any such coach in either of the said streets, he shall on conviction, on the oath of one witness, within seven days, either before the commissioners, or one justice, forfeit not exceeding 40*s.* nor less than 10*s.*, half to the informer, and half to the poor of the said parish; which if not paid, such offender shall be committed to the house of correction to hard labour, not exceeding one month, nor less than seven days, unless such penalty be sooner paid.

Note.—There are several other regulations by stat. 39 & 40 *G.* 3. *c.* 47. which are under the management of the commissioners for hackney coaches, and being local, are foreign to this work.

Coach before a tradesman's door.

In *Slater* v. *Swann*, 2 *Str.* 872. *Raymond* C. J. said, if a hackney coach stand before a tradesman's door, and hinder customers, he may lawfully take hold of the horses, and lead them away, and is not bound to take his remedy for damages.

48 G. 3. c. 87. Numbered stage-coaches; booking-houses.

§ 9. and 10. of 48 *G.* 3. *c.* 87. Relate to numbered stage coaches plying in the streets, and to the number of their booking houses.

Stat. 48 *G.* 3. *c.* 87.

SCHEDULE or TABLE (A).

For every hackney coach hired and taken any distance, there shall be paid the rates and fares following; that is to say,

SCHEDULE or TABLE (B).

For every hackney-coach hired and taken for any time, there shall be paid the rates and fares following; that is to say,

			s.	d.
For any time within - -	and not exceeding	Thirty minutes - -	1	0
Above thirty minutes		Forty-five minutes -	1	6
Above forty-five minutes		One hour - -	2	0
Above one hour		One hour twenty minutes	3	0
Above one hour twenty minutes		One hour forty minutes -	4	0
Above one hour forty minutes		Two hours - -	5	0
Above two hours		Two hours twenty minutes	6	0
Above two hours twenty minutes		Two hours forty minutes	7	0
Above two hours forty minutes		Three hours - -	8	0
Above three hours		Three hours twenty minutes	9	0
Above three hours twenty minutes		Three hours forty minutes	10	0
Above three hours forty minutes		Four hours - -	11	0

And for any further time after the rate and proportion of sixpence for every fifteen minutes.

55 G.3. c.159. Fares for two-wheeled carriages.

By stat. *55 G. 3. c. 159. § 4.* The owners and drivers of two-wheeled carriages drawn by one horse, may demand two-thirds of the amount of the fares, rates, and benefits established by law for hackney coaches and chariots.

Hair-Powder.

N. B. — For the mannner of making hair-powder, and the excise duty thereon, see title **Excise** (*Starch*), &c. and **Taxes**.

Harbour, filling up. See **Rivers and Navigation.**

Hares. See **Game.**

Harepipes. See **Game.**

Hard Labour, Power to sentence certain Offenders to be kept to. See vol. iii. tit. **Judgment.**

Hawkers and Pedlars.

[7 G. 3. c. 48. — 48 G. 3. c. 84. § 7. — 50 G. 3. c. 41. — 52 G. 3. c. 108.]

I. *Licences, Duties, &c.*
[50 G. 3. c. 41.]

II. *Certificate to enable Persons to obtain Licences.*
[50 G. 3. c. 41.]

III. *Exceptions. — Selling in Markets or Fairs.*
[7 G. 3. c. 43.—48 G. 3. c. 84.—50 G. 3. c. 41.—52 G. 3. c. 108.—6 G. 4. c. 80.]

IV. *Hawkers duly licensed may set up any Trade.*
[50 G. 3. c. 41.]

V. *Selling by Auction.*
[50 G. 3. c. 41.]

VI. *Packages to be marked.*
[50 G. 3. c. 41.]

VII. *Dealing in Smuggled Goods.*
[50 G. 3. c. 41.]

VIII. *Trading contrary to or without a Licence, or refusing to produce it.*
[50 G. 3. c. 41.]

IX. *Hiring or lending Licences.*
[50 G. 3. c. 41.]

X. *Penalty on forging Licences.*
[50 G. 3. c. 41.]

XI. *Duties of Constables.*
[50 G. 3. c. 41.]

XII. *Recovery of Penalties.*
[50 G. 3. c. 41.]

XIII. *Of Appeal.*
[50 G. 3. c. 41.]

XIV. *Conviction. — General Issue.*
[50 G. 3. c. 41.]

I. Licences — Duties, &c.

year of his late majesty King *William*, intituled *An act for licensing hawkers and pedlars, for a further provision for the payment of the interest of the transport debt for the reducing of* Ireland: And all acts made for continuing, altering, or regulating the duties thereby imposed, as far only as the said acts relate to such continuance, alteration, or regulation, and all powers, provisions, and clauses contained in any act or acts of parliament relating to the collection of the same duties, shall be repealed, except such of the said powers, provisions, and clauses as may be necessary to be kept in force for the recovery of any arrears of the said duties hereby repealed, or any penalties incurred under any of the acts hereby repealed: Provided always, that nothing herein contained shall be construed to revive any act or provision which had been repealed by any of the acts or provisions repealed by this act, and which were not in force at the time of passing this act; but the same shall continue repealed, notwithstanding any thing contained in this act.

50 G.3. c.41.

9 & 10 W.3. c.27. and all acts relating to the duties thereby imposed, &c. repealed.

§ 31. All the powers, rules, penalties, and forfeitures, exemptions, and things whatsoever, which, by stat. 9 & 10 *W.* 3. *c.* 27., or by any other law now in force relating to the duties by that act granted, are provided, settled, or established (other than so far as the same is or are inconsistent with or repugnant to this act, and other than in such cases for which different provisions are prescribed by this act), shall be exercised, and put in execution for the managing, raising, levying, recovering, and paying the several duties hereby granted, as fully as if all the said powers, &c. were repeated in this present act.

Powers of recited act of 9 & 10 W. 3. where applicable, extended to this act.

§ 2. All licences granted under any former act shall continue in force until the 1st day *September* 1810; and all future licences which shall be granted under this act shall continue in force until the 1st day of *August* next following the dates of such licences.

Former licences to be in force till Sept. 1. 1810, and all future licences to continue in force till Aug. 1.

§ 3. and § 8. transfer the licensing from the former commissioners to the commissioners appointed for the time being for licensing and regulating hackney coaches.

Duties to be under commissioners for licensing hackney coaches.

§ 11. Persons already authorised out of *London* to grant licences are to continue to do so till their authority is annulled.

§ 4. The treasury may make allowances to the commissioners of hackney coaches, and their officers, for their services under this act.

Allowances to commissioners.

§ 9. The licences shall be annual, and continue in force for such time as in § 2. provided.

Licences to be annual.

§ 10. The duties shall be paid at the time of receiving the licences.

And by § 33. the several duties herein-before granted shall be paid from time to time into the hands of the cashier for the time being, of the duties on hawkers, pedlars, and petty chapmen, and paid into the exchequer, and made part of the consolidated fund.

Duties to be paid to cashier, &c.

§ 6. After the 1st day of *August*, 1810, there shall be raised and paid the rates and duties following; *i. e.* by every hawker, pedlar, petty chapman, and *every other trading person and persons going from town to town, or to other men's houses* (*a*) and travelling either

Duty for licences.

(*a*) *Rex* v. *Little*, *T.* 31 *G.*2. 1 *Burr.* 609. *Paley*, 68. A conviction on stat. 9 & 10 *W.*3. *c.*27. (which requires a duty to be paid, and a licence taken out by every hawker, pedlar, petty chapman, or any other trading person, "going from town to

50 G. 3. c. 41.

on foot, or with horse, horses, or otherwise, in *England* and *Wales*, or the town of *Berwick-upon-Tweed*, carrying to sale, or exposing to sale any goods, wares, or merchandise, a duty of 4*l.* for each year.

And every person so travelling with a horse, ass, or mule, or other beast (*a*) bearing or drawing burthen, the sum of 4*l.* yearly, for each beast he or she shall so travel with, over and above the said first-mentioned duty of 4*l.*

II. Certificate to enable Persons to obtain Licences.

[50 G. 3. c. 41. § 12. 13.]

50 G. 3. c. 41. Hawkers, before they are licensed, to produce certificate of their good character.

By stat. 50 G. 3. *c.* 41. § 12. Before any person shall receive any licence to trade or travel as aforesaid, every such person shall produce to the commissioners for licensing and regulating hackney coaches, or their deputy appointed for licensing hawkers, pedlars,

town, or to other men's houses, and travelling either on foot or with horse, carrying to sell or exposing to sale any goods," &c.) set forth "that one *T. P.* came before the justice, and gave him information that *T. Little*, the defendant, (at a place and time specified,) was found offering to sale silk handkerchiefs, and trading as a hawker, pedlar, or petty chapman; and that the said *T. Little* did then and there offer to sell a parcel of silk handkerchiefs; and that the said *T. Little* did not, although required so to do, produce any licence, as the law in that case made and provided directs to qualify him for his said trading." It afterwards stated, that the defendant, upon his appearance, was asked if he had any thing to say why he should not be convicted of the said offence so charged upon him in form aforesaid; whereupon he *confessed* that he did offer to sale silk handkerchiefs to the said *T. P.* in such manner as is mentioned in the aforesaid information, and that he hath no licence for selling thereof. It then proceeded, "and the said *T. Little* is now here required to produce a licence granted to him to empower or qualify him to travel or trade pursuant to the statute; and he doth not produce any such licence, or any licence in that behalf, and doth not allege any matter in his defence." Whereupon it was stated, "that it manifestly appears to the justice that the defendant is guilty of the offence in the information above laid to his charge in manner and form as by the same is above alleged." He was accordingly "convicted of the said *premises* in the said information specified, according to the

petty chapmen, and other trading persons as aforesaid, a certificate signed by some one clergyman officiating within the parish, chapelry, or place wherein such person so applying for such licence has his usual residence, and also by two reputable inhabitants of the said parish, chapelry, or place, attesting that the person so applying is of good character and reputation, and is a fit person to be licensed to exercise the trade of a hawker, pedlar, and petty chapman. 50 G.3. c.41.

§ 13. The certificate so to be produced shall be in the form or to the effect following:

WE, A. B. *the minister, and* C. D. *and* E. F. *being two householders, residing at* ———, *in the parish, chapelry, or otherwise*, [as the case may be,] *of* ———, *in the county of* ———, *do hereby certify, That* G. H. *hath been known to us for the space of* ——— *years last past, and during all that time hath usually resided in the said parish, chapelry, or otherwise* [as the case may be], *of* ———, *and is a person of good character and reputation, and is a fit person to be licensed to exercise the trade of a hawker, pedlar, and petty chapman. Dated the* ——— *day of* ———

A. B. *Minister.*
C. D. } *Householders.*
E. F. }

III. Exceptions.—Selling in Markets or Fairs.

[7 G. 3. c. 43. § 7, 8, 9.—48 G. 3. c. 84. § 7.—50 G. 3. c. 41. § 5. 23.—52 G. 3. c. 108. § 1, 2.—6 G. 4. c. 80.]

Stat. 50 *G.* 3. *c.* 41. § 5. Nothing herein contained shall extend or be construed to extend to hinder any person or persons from selling or exposing to sale any sorts of goods or merchandise in any public mart, market (*a*), or fair, legally established within the kingdom of *England*, dominion of *Wales*, and town of *Berwick-upon-Tweed*; but such person or persons may do therein as they lawfully might have done before the making of this act; any thing herein contained to the contrary notwithstanding. 50 G.3. c.41. Goods may be exposed to sale in public markets.

§ 23. Nothing in this act shall extend to prohibit any person or persons from selling any printed papers licensed by authority, or any fish, fruit, or victuals, nor to hinder the real worker or workers, or maker or makers of any goods, wares, or manufactures of *G. B.*, or his, her, or their children, apprentices, or known agents or servants, usually residing with such real workers or makers only, from carrying abroad or exposing to sale, and selling by retail or otherwise any of the said goods, wares or manufactures of his, her, or their own making, in any mart, market, or fair, and in every city, borough, town corporate, and market town; nor any tinkers, coopers, glaziers, plumbers, harness-menders, or other persons usually trading in mending kettles, tubs, household goods, or harness whatsoever, from going about and carrying with him or them proper materials for mending the same. Act not to affect persons selling certain articles, nor tinkers, &c.

Moore q. t. v. *Edwards*, *M. G.* 3. 2 *Chitt. Rep.* 213. *Clarke* moved to set aside a verdict obtained for the plaintiff in an action A person buying books in

(*a*) This appears to extend only to sales in the public market-places, and on the days of markets. *Rex* v. *Redfearne*, 4 *T. R.* 278.

50 G.3. c.41.

sheets and making them up, and then going from London into the country and selling them, is within the hawkers' and pedlars' act, and is not exempted from penalties as the maker of the goods.

for penalties on the hawkers' and pedlars' act. The defendant bought books in sheets, and made them up, and carried them from *London* into the country, and sold them at places where he did not reside; and it was contended that he was a maker of the goods within the exception in the hawkers' and pedlars' act.—*Abbott* C. J. This case comes within the act of parliament. A person going from *London* into the country is within the term 'travelling,' and the defendant is not within the exception, as a maker of the commodity.—*Bayley* and *Holroyd* Js. concurred. *Per cur.* R. R.

52 G.3. c.108. No wholesale trader deemed hawker, nor shall he or his servants be liable to penalties for going from house to house selling goods by wholesale only.

By stat. 52 *G.* 3. *c.* 108. § 1. No person being a wholesale trader in *lace*, in *woollen*, *linen*, *silk*, *cotton*, or *mixed goods*, or any of the goods, wares, or manufactures of *G. B.*, and selling the same by wholesale, shall be deemed or taken to be a hawker, pedlar, or petty chapman within the intent and meaning of stat. 50 *G.* 3. *c.* 41., or any other act relative to hawkers, pedlars' or petty chapmen, or of any or either of them; and all and every such person and persons, his, her, or their apprentices, servants, or agents selling by wholesale only, shall go from house to house, and from shop to shop, to any of their customers, who shall sell again, by wholesale or retail, without being subject or liable to any of the penalties or forfeitures contained in the said stat. 50 *G.* 3. *c.* 41., or in any of the said acts touching hawkers, pedlars, and petty chapmen.

Nor shall persons be prohibited from carrying about coals in carts, &c.

§ 2. Nothing in the said stat. 50 *G.* 3. *c.* 41. shall extend to prohibit any person from carrying about coals in carts, or on horses, mules, and asses, and selling the same by retail, or subject any such person to any duty, penalty, or forfeiture imposed by the said stat. 50 *G.* 3. *c.* 41.

Exposing to Sale any Goods, Wares, or Merchandise.

48 G.3. c.84.

But by stat. 48 *G.* 3. *c.* 84. § 7. If any hawker, pedlar, petty chapman, or other trading person going from town to town, or to other men's houses, and trading on foot, or with horses or other

and for any one or more justice or justices of the peace for the county, riding, division, city, or liberty respectively wherein such offence shall be committed, on his or their own view, or on the confession of the party, or by the proof on the oath of one or more credible witness or witnesses made of such offence, to convict any person or persons so offending as aforesaid, and such person or persons so offending and convicted shall immediately on such conviction pay the said sum of 100*l.*, or some mitigated amount, not being less than one fourth part thereof; and on such offender or offenders refusing or neglecting to pay the said sum, the justice or justices so convicting as aforesaid, shall and may, by warrant or warrants under his or their hand and seal, or hands and seals, commit the offender or offenders to hard labour in the house of correction for the said county, riding, division, city, or liberty respectively, for the space of three months, to be reckoned from the day of the said commitment; and the person or persons so committed shall not be discharged until he, she, or they shall have paid the said sum of money, or until the full expiration of the said three months.

6 G. 4. c. 80.

not paid immediately, committed to the house of correction for three months, or until paid.

§ 139. It is and shall be lawful for one or more such justice or justices of the peace as aforesaid, on any information upon oath made before him or them against any person or persons, for hawking, or selling or exposing to sale any spirits contrary to this act, to issue his or their warrant or warrants under his or their respective hands and seals, to be directed to any constable or other ministerial officer of the peace, for the apprehending and bringing such offender or offenders before such justice or justices of the peace, in order to such offender or offenders being by such justice or justices dealt with according to law.

One or more justice, upon information on oath, may issue warrant to apprehend such offenders.

§ 140. And whereas, for want of a constable or other ministerial officer of the peace being at hand to apprehend such offender or offenders, he, she, or they has or have often escaped unpunished; be it further enacted, that it shall and may be lawful for any person or persons whomsoever, to seize and detain any person or persons who shall hawk, or sell, or expose to sale, in manner aforesaid, any spirits, by whatsoever name or names they are or may be called or distinguished, for such reasonable time as he, she, or they may give notice to the constable, headborough, tythingman, churchwarden, overseer of the poor, or some other peace or parish officer or officers, who are hereby required to carry such person so seized and detained before some one of H. M.'s justices of the peace for the county or place where such offence or offences shall be committed; which said justice of the peace is hereby required to proceed to the examination of such person so seized and brought before him for such offence, in the same manner as if such person so seized had been apprehended and brought before him by a constable, or any other ministerial officer of the peace, under such warrant as aforesaid.

Any person may detain a hawker of spirits, and give notice to a peace officer, who is to carry the offender before some justice.

By stat. 7 *G.* 3. *c.* 43. § 7, 8, 9. If any *foreign cambric*, or *French lawn*, shall be found in the possession of any hawker, pedlar, or petty chapman, he shall forfeit the same, and also all the other goods in the pack where the same shall be found, and shall also be adjudged to have forfeited his licence; half the said goods to be disposed to the use of the king, and half to the officer who

7 G. 3. c. 43. Foreign goods.

7 G. 3. c. 48. shall sue for the same; and if no officer shall sue within one month, then any other person may sue.

IV. Hawkers duly licensed may set up any Trade.

[50 G. 3. c. 41. § 22.]

50 G. 3. c. 41. Hawkers who, on May 1. 1810, were duly licensed may set up any trade in the place of their residence.

By stat. 50 *G.* 3. *c.* 41. § 22. It shall be lawful for any person or persons, who on the first day of *May*, 1810, was or were duly licensed to trade as hawkers and pedlars, to set up, occupy, use, or exercise any craft, mystery, or occupation, used or occupied within this realm, in any place where they shall be resident inhabitants, although they shall not have been brought up in such craft, mystery, or occupation, seven years, as apprentices (*a*); and also to set any person to work in such craft, mystery, or occupation, although such person shall not have been apprentice therein as aforesaid; any penalty, matter, or thing contained in stat. 5 *Eliz. c.* 4. to the contrary notwithstanding; and if any such person, or their wives or children, shall be prosecuted for using or exercising any such craft, mystery, or occupation in any city, town, or place, and shall make it appear that they had such licence as aforesaid, they shall, upon the general issue pleaded, be found not guilty in any action, bill, plaint, information, or indictment for such cause exhibited against him; and in all cases where costs are allowed, such person so acquitted shall be entitled to and shall receive double costs; and no such persons, their wives, or children, during the time they shall use and exercise such craft, mystery, or occupation, in any parish or place, shall be removable therefrom to his, her, or their last legal place of settlement, until such person or persons shall become actually chargeable to such parish or place, any law not † in being, relative to the settlement of the poor, to the contrary thereof notwithstanding. (See stat. 35 *G.* 3. *c.* 101., by which no person can be removed until "*actually chargeable.*")

† *Sic.*

for every offence the sum of 50*l.*, to be recovered and applied as hereinafter mentioned. (See § 24. *post*, § XII.) 50 G.3. c.41.

Allen v. *Sparkhall*, *M.* 58 *G.* 3. 1 *B.* & *A.* 100. This was an action to recover the penalty under stat. 50 *G.* 3. *c.* 41. § 7. At the trial before *Gibbs* C. J. at *Norfolk Sum. Ass.* 1816, it was admitted that the defendant, a hawker and pedlar duly licensed, on the 18th *July*, 1816, opened a certain room in the town of *Holt*, and sold therein by himself, by retail, one cotton pocket-handkerchief, and one other handkerchief, he the defendant not then being a householder in that town, nor such town then being his usual place of abode, but that the defendant did not sell the said goods by outcry, knocking down by hammer, candle, lot, parcel, or any mode of sale at auction, or whereby the best or highest bidder should be the purchaser. Upon these facts the plaintiff was nonsuited, with leave to move to enter a verdict for one penalty, if the court of K. B. should think the sale within the act. On the motion being made, Ld. *Ellenborough* C. J. said, — On looking at the clause, I think that the words "by outcry, &c. or any other mode of sale at auction," govern the meaning of the whole. If the clause had stopped at the words "any other means or device," an argument might have been raised; but the general scope is laboriously confined to outcry and sale at auction. — *Bayley* J. There is not any general prohibition to prevent those persons from selling, but only by those means specified in the statute. Now this defendant did not adopt any of the prohibited means. — *Abbott* J. The clause is prohibitory, but the prohibition is confined to persons of a certain description. A hawker is one description of person, a person who sells by retail is another, and neither must sell by auction — *Holroyd* J. concurred. Rule refused.

A licensed hawker may sell by retail in a hired room, where he is not a householder, provided such selling be not by outcry, &c. or some mode of sale at auction.

R. v. *Turner*, *E.* 2 *G.* 4. 4 *B.* & *A.* 510. Conviction of defendant under stat. 50 *G.* 3. *c.* 41. The offence charged in the information was, that the defendant heretofore, to wit, on, &c., at, &c., was a *pedlar and trading* person, going from town to town, travelling with horses, exposing to sale goods; and that he did, on the day and in the year last aforesaid, as a pedlar and trading person, go from town to town, travelling with horses at, &c., and did then and there, as a pedlar and trading person, going from town to town, and travelling with horses, expose to sale goods, to wit, china, &c. The defendant having appealed against the conviction, the sessions confirmed it, subject to the opinion of the court of K. B. on the following case: The defendant had no hawker's licence, but was a licensed auctioneer, having only two usual places of abode, the one at *Bath*, and the other at *Cheltenham*. At *Cheltenham* he was the agent for the real workers or makers of the goods, for the purpose of selling such goods, as well by private contract as by public auction. The real workers or makers of the several goods mentioned were not in partnership, but were distinct employers of the defendant for the sale of their several property. In the beginning of the month of *March*, 1820, certain goods, consisting of cabinet ware, &c., were sent by the several real workers, or makers of them, to the defendant at *Cheltenham*, with a request from them, that he would cause the same to be conveyed by public carriers' waggons from *Cheltenham* to the city of *Worcester*, and would himself pro-

A licensed auctioneer going from town to town in a public stage-coach, and sending goods by public waggons, and selling the same on commission, by retail or by auction, at the different towns, is a trading person within the meaning of stat. 50 G.3. c.41. § 6. and must take out a hawker's and pedlar's licence.

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ceed thither, in order to sell the same there by public auction; and in case the whole of such goods should not be there sold, that he would cause the same to be conveyed by public carriers' waggons from *Worcester* to *Gloucester*, and would himself proceed to *Gloucester*, in order to sell the same there by public auction. The defendant, in compliance with this request, caused the goods to be conveyed by public carriers' waggons from *Cheltenham* to *Worcester*, and proceeded himself to *Worcester* some part of the way in a common stage-coach, drawn by four horses, and the other part of the way in a post chaise, and when at *Worcester* exposed the goods for sale by public auction, and sold many of them by public auction to different persons. Shortly after the sale at *Worcester*, the defendant caused such part of the goods as were not sold at *Worcester* to be similarly conveyed to *Gloucester*, and proceeded thither himself by a stage-coach; and when at *Gloucester* exposed such goods for sale by public auction, and sold many of them by public auction, to different persons. The whole of the goods belonged to the real workers or makers of them, the defendant not having any property therein; and the whole expenses of removing the goods from place to place were allowed to him in his account with the real workers or makers. The defendant paid regularly the auction duty upon such sales, which, together with the usual commissions, was allowed to him in his account with the real workers or makers of the goods. At the time of the sales, neither the real workers or makers of the goods or of any part thereof, or their children, apprentices, or known agents or servants usually residing with them, were present in *Worcester* or *Gloucester*, nor were *Worcester* or *Gloucester*, or either of them, an usual place or places of abode of any of the real workers or makers of the goods. The defendant was not the known agent or servant usually residing with the real workers or makers of such goods, or with any of them, nor was he a householder either at *Worcester* or *Gloucester*. — After argument, *Abbot* C. J. said, — The question intended to be submitted



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in its present form, inasmuch as the ground of it is, that the defendant travelled with horses. If it had been found as a fact in the case that the defendant had been convicted for want of a horse licence, I should have thought that the conviction could not be supported; for the horses, in respect of which he is bound to take out a licence, are those bearing or drawing burden, or, in other words, carrying and drawing his goods. The defendant here was convicted for having no licence at all, and I think, therefore, the word "horses" may be rejected. And, besides, in the way in which the present question is brought before us, we cannot look at the form of the conviction, but merely at the case submitted to us by the sessions. The order of sessions must, therefore, be affirmed. — *Holroyd* J. I doubted at first whether the words of the 17th section, "trade as aforesaid," would be satisfied without an actual sale of goods. I think, however, that those words refer to the 6th section, and that they are sufficiently satisfied by a mere exposure to sale. The ground of this conviction is, that the appellant had no licence at all, and therefore the mode of travelling is immaterial and need not be proved. — *Best* J. I think the defendant clearly within the act from the exceptions in the 9th and 23d sections, which otherwise would have been quite unnecessary. It is said, that if we affirm this conviction, it will be impossible for an auctioneer to carry on his business, but that is not so. The business of an auctioneer is to sell property in the town in which he resides, or to go to other persons' houses and sell property for them at their houses. It is no part of the business of an auctioneer to travel from town to town, and sell goods there in the manner in which the defendant has acted. Order of sessions confirmed.

A person travelling from town to town, and having packages of books, &c. sent after him by public conveyance, and taking rooms at each town, and there selling such books, &c. by retail by auction, is a trading person within 50 G. 3. c. 41.

Dean, q. t. v. *King*, *E.* 2 *G.* 4. 4 *B.* & *A.* 517. Declaration against the defendant for penalties, under the hawkers' and pedlars' act. The first count charged that the defendant at *Axminster*, in the county of *Devon*, being a trading person going from town to town, and travelling with a horse, and not being a householder there, and that not being a usual place of his abode, did by himself sell by auction divers printed books, &c. contrary to the form of the statute; whereby he incurred a penalty of 50*l*. The second count charged that the defendant travelled on foot. The third and fourth counts charged him as a hawker and pedlar. There were other counts, charging offences committed at *Honiton*. At the trial before *Holroyd* J. at the last assizes for the county of *Devon*, the following facts appeared in evidence: — In *February*, 1820, the defendant had been at *Chard*, but there was no evidence that he had sold any books there by public auction; he went from *Chard* to *Axminster* in a borrowed gig, but it did not appear that any books were sent or conveyed by him from *Chard* to *Axminster*. He took two rooms at *Axminster*, and sold books by retail and by auction there: he went from thence to *Honiton*. It did not appear in what mode he travelled: nine chests, containing books, &c. weighing 1325lbs. were sent from his rooms at *Axminster* by a common stage waggon, directed to him at *Honiton*, and there he sold books both by retail and by auction. It was proved that he was not a householder at *Honiton* or *Axminster*. Upon these facts, the learned judge thought that he was a trading person, going from town to town, within the meaning of stat. 50 *G.* 3. *c.* 41.;

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and he directed the jury to find a verdict for the plaintiff, with liberty to the defendant to move to enter a nonsuit. *Casberd* now moved accordingly, and argued that the defendant is not a person within the contemplation of this act of parliament, which applied only to hawkers and pedlars, and persons *ejusdem generis*. Now a hawker is a person who carries with him, either in a package or a cart, the goods which he intends for sale. In this case the goods were sent by a common stage waggon. The term "other trading person," in the act of parliament, applies to persons of the same description as a hawker and pedlar who deals in a small way. Here the large quantity of goods which the defendant sent from *Axminster* to *Honiton* shows that he is not a dealer of that description; and, therefore, not a person within the contemplation of the act, which meant only to apply to petty dealers carrying their commodities with them. In *Dean* q. t. v. *Hereford*, tried at *Exeter Spring Assizes*, 1820, *Wood* B. was of opinion, that a person who sent large quantities of goods by a ship to *Plymouth* dock, and conveyed them in a cart to *Plymouth* town, where he took a house, and sold them by auction, was not within this act. In that case it appeared that the goods, which were books, weighed two or three tons; and *Wood* B. laid particular stress on that circumstance, and said, it was more than a person going from town to town, or to other men's houses, could carry. That case is directly in point to show, that the present defendant was not a person within the meaning of this act of parliament. — *Abbott* C. J. I am clearly of opinion, upon the facts of this case, that the defendant was a trading person, travelling from town to town, within the meaning of this act of parliament. The argument urged on the part of the defendant, arising out of the extent of his dealings, would go to show, that when the inconvenience to the resident tradesman is the greatest, no offence would be committed. I think that there should be no rule in this case. R. R.

1823. Saturday, 3d May. An information charging a defendant under 50 G. 3. c. 41. as a trading person, going from town to town, &c. &c. with selling at Shrewsbury (by sale at auction) goods, &c. held to be supported by evidence that the defendant lived at Birmingham, and was a trader there; that he went to

The Attorney-General v. *Tongue*, *E.* 1823. MS. (*a*) A rule had been granted on behalf of the defendant in this case, (which was an information for penalties under stat. 50 *G.* 3. *c.* 41. § 7.) requiring the attorney-general to show cause why the verdict which had been obtained for the crown for one penalty, should not be set aside and judgment entered for the defendant, on the ground that the facts of the case as proved in evidence on the trial before Mr. *Serjeant Bosanquet* at the last assizes for *Salop*, did not bring the defendant within the act on which the information was founded. The information consisted of eighteen counts. The first count stated, that the defendant after the 1st day of *August* 1810, and before, &c. (on the 9th of *April*) at *Shrewsbury*, then being a trading person going from town to town, and travelling with a horse, and not being a householder there, and the same place, to wit, *Shrewsbury* aforesaid, not being an usual place of his abode, did then and there, to wit, on the day and in the year last aforesaid, at *Shrewsbury* aforesaid, by a certain device, that is to say, by a sale at auction, vend and sell by one *Charles Hulbert*, his agent in that behalf, by knocking down of hammer,

(*a*) Communicated by the kindness of Mr. Donne.

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certain goods, wares, and merchandise, to wit, &c. (enumerating and describing them) against the form, &c., whereby, &c. the said defendant had forfeited for his said offence 50*l*., &c. The second count varied from the first only by substituting travelling *on foot* for travelling with a horse. The third count described the defendant as "*being a hawker and pedlar*" there (at *Shrewsbury*), not being a householder there, and that place not being an usual place of his abode, &c., and charged that he by the said *Charles Hulbert*, his agent in that behalf, sold by auction at that place divers goods, &c. (as before). The fourth, fifth, and sixth counts differed from the first three only by charging that the defendant did "himself" sell by auction, &c. instead of selling by an agent. The six following counts charged other penalties to have been incurred on the 10th *April*; and the six last counts charged that other penalties were incurred on the 11th *April*, by the same acts. The defendant pleaded not guilty to the whole information. From the learned serjeant's report, as now read by Mr. Baron *Hullock*, it appeared to have been proved by the testimony of the principal witness for the crown, *Hulbert*, the auctioneer who carried on business at *Shrewsbury*, that the defendant was a silversmith and jeweller *residing at Birmingham* and *not at Shrewsbury*, that he had on a certain occasion employed the witness to sell for him by auction at *Shrewsbury* several chests of various articles, principally jewellery, cutlery, plate, and plated and japanned goods, which were sent over for the purpose of being so disposed of from the defendant's residence at *Birmingham*, to the witness at *Shrewsbury*; and that the defendant came over to *Shrewsbury* and remained there during the sale, which continued from the 3d to the 11th of *April*, with the exception of two intervening days, being *Good Friday* and *Sunday*, under the direction of the defendant, who resided during his stay at *Shrewsbury*, at an inn there. Another witness, who was an auctioneer at *Hereford*, proved that he had been also employed by the defendant to sell for him goods of a similar description, in the same manner at *Hereford*. Witnesses having proved purchases made by them at the sale, other witnesses were called to prove that they had manufactured many of the articles so sent to be sold by the defendant, whom they described to be what is called "a slaughterman," which they explained to mean a person who makes it his business to buy goods of manufacturers in an unfinished state, when in order to obtain money to pay their workmen on a *Saturday* night, they are reduced to the necessity of disposing of them in that state. Upon this, the material part of the evidence, the objections of the defendant's counsel were founded, which were *first* (and principally on the point of law), that the defendant was not proved to be a trading person going from town to town, within the meaning of the act; *secondly*, as matter of evidence, that it was not sufficiently shown that the person spoken of as having employed *Hulbert* at *Shrewsbury*, was the same person as had employed the auctioneer at *Hereford*; and lastly, that at all events only one penalty could be recovered, as no one witness had fixed any particular day or days on which purchases had been made, so that for any thing that appeared, every thing spoken to might have been sold on the same day, and may have been of the manufacture of the defendant. The learned serjeant directed the

Shrewsbury and took up a temporary abode at an inn there; and that he employed an auctioneer living at Shrewsbury to sell for him there, by auction, goods sent to him there from Birmingham, part of which was proved to be not of his own manufacture, who sold the goods by the defendant's order, and under his directions and authority, the defendant remaining in Shrewsbury during the sale; — against the objection, that the evidence did not establish a going from town to town, so as to bring the defendant within the statute.

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jury, that if they believed the evidence, independently of the testimony of the *Hereford* auctioneer, they ought to find a verdict for the crown; that if the defendant had sold on more days than one, although the particular days were not made out, the defendant was liable to two penalties, which were all that the crown sought to recover, and he left it to the jury to say whether they thought the defendant's dealing at *Shrewsbury* was a continuation of the same course of trading as was carried on by means of the auctioneer at *Hereford*. The jury found a verdict for one penalty; and they said that they did not find that the person who had employed the auctioneer at *Hereford*, was the same person as had employed *Hulbert* at *Shrewsbury*. The verdict was then taken *on the third count*, the learned serjeant reserving the point of law by giving the defendant leave to move that the verdict for the crown should be set aside, and a verdict entered for the defendant. When the rule for that purpose was applied for, the motion was supported by the following propositions: — that the third count had clearly not charged a complete offence, in not stating enough to constitute the offence meant to be charged; and in not negativing the possession of the legal qualifications of a hawker by the defendant; that the offence charged by the first count was not supported by the evidence; it was not proved that the defendant was a hawker (licensed) or a trading person (other than a hawker) going from town to town; for that the going from *Birmingham*, the place of the defendant's abode, to *Shrewsbury*, was not a going from town to town or to other men's houses, within the act, but that it was no more than a going to one town and to one house; and they submitted, that the words "going from town to town or to other persons' houses," necessarily meant going from and to more towns than one; and that exclusively of the party's town of residence, and to more than one house; — [Mr. Baron *Hullock* here suggested the case of *The King* v. *The Inhabitants of Gamlingay*, 3 *Term Rep.* 513., as an instance wherein the preposition "from" was considered to be exclusive:] that in point of fact

section could not be maintained, and the verdict must be set aside, and they urged that it would be injurious to the internal commerce of the country to hold that this defendant was within the statute. — *Pearson* and *Winter*, on these grounds, obtained the rule. — *Jervis*, *Taunton*, *Puller*, and *Russell* now showed cause; their arguments urged against the rule in substance negatived the propositions advanced by the counsel for the defendant, asserting, that the going from *Birmingham* to *Shrewsbury* was a travelling from town to town within the act, and that the selling proved was a sufficient trading, the defendant having been proved to be a general dealer in the articles sold by him. They mentioned a case of *Dean* q. t. v. *Scholes* (*a*), in which Mr. Baron *Graham* was said to have determined this very question at Nisi Prius. — As to the verdict having been entered on the third count, they insisted, that this being an information by the attorney-general, the crown was not bound by that entry, but might shift it to any other which the evidence would support, if the offence charged in the particular count on which it had been entered up were not sufficiently proved. *Pearson* and *Winter* having been heard in support of the rule, *Jervis* was stopped by the court in rising to reply. — *Graham*, Baron. I cannot bring my mind to entertain any serious doubt in this case; for I think that the offence charged in the first count of the information is fully proved by the evidence, notwithstanding the objections which have been raised. I think we may fairly put the cases which have been cited in support of this rule out of the question in this instance, because they do not apply to the case now before us. The object of the legislature in passing the act upon which this information is founded, was to protect on the one hand fair traders, particularly established shopkeepers, resident permanently in towns or other places, and paying rent and taxes there, and for local privileges, from the mischiefs of being undersold by itinerant persons to their injury; and, on the other, to guard the public from the impositions practised by such persons in the course of their dealings, and who have no known or fixed residence, but carry on a trade by means of vending goods conveyed from place to place by horse or cart. The provisions of the statute are wise and salutary: and it should, therefore, be construed liberally and comprehensively [Stating the 7th section.] There is a distinction made between persons being hawkers, and trading persons travelling from town to town to sell their goods; and the principal question which has been made is, — Whether the circumstances upon which this verdict is founded are sufficient to bring the defendant as a person of that description within the prohibition contained in that section. I pass over the preliminary point which was raised, that the verdict

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(*a*) This was an action to recover several penalties of 50*l.* under 50 *G.* 3. *c.* 41. § 7. tried by Baron *Graham* at the Spring assizes, 1820, at *Cambridge*. The facts in proof were shortly these: — That defendant resided at *Hull*, and forwarded thence in a vessel, by water carriage, a quantity of earthenware, to *Wisbeach*: that he personally went by land from *Hull* to *Wisbeach*, where he employed a resident auctioneer to sell the goods by auction; and that there were two days' sale by auction: there was no proof of defendant having similarly sold before or after either at *Wisbeach* or elsewhere. — B. *Graham* directed a verdict for two penalties — one for each day's sale at *Wisbeach*; and the jury found accordingly.

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could not be shifted, being clearly of opinion, that in an information of this nature, as in an indictment, if there be any count on which the conviction may be sustained, it will be sufficient, and punishment must necessarily follow. I am, indeed, also of opinion, that the evidence supports the charge in the third count; for, I consider, that there was sufficient proof of his trading at Shrewsbury as a hawker and pedlar. The case of *The King* v. *Little* was very different in its circumstances from this: there the defendant was proved to have done only one single act, by selling a parcel of silk handkerchiefs to a particular person; here the defendant sent over to *Shrewsbury* a quantity of goods to a considerable amount in value, enough to stock the temporary shop which he opened there, to undersell the fair trader there, which he disposed of by way of auction. I cannot myself entertain any doubt, therefore, that the defendant was trading at *Shrewsbury* in the character of hawker, pedlar, or petty chapman, and that he comes within the description of persons prohibited from so selling goods by this act of parliament. I, therefore, think the third count is made out upon the evidence as it stands. — The objection taken to the proof as applied to the first count is, that there was no evidence of the defendant being a person going from town to town and selling goods. I am, however, clearly of opinion, that he is proved to have been such a person, and that it was sufficient for that purpose to show that he left *Birmingham*, his place of residence and business, to go to *Shrewsbury*, in order to sell his goods; and on that part of the case I do not think that the decision in *The King* v. *The Inhab. of Gamlingay* at all applies: for this is not a question upon which the construction of the words "from" and "to," as used in particular cases, has any bearing. The case before Mr. Baron *Wood* is mainly distinguishable from this. The defendant there took a house in the place where he sold the goods. The case which has been adverted to as tried before me at Nisi Prius, I well remember was very strenuously defended, and no motion was afterwards made to set aside the verdict, on the ground of a misdirection on my part. I am clearly of opinion, that the facts proved in this case are quite sufficient to bring the defendant within the statute. — *Hullock*, B. I shall confine my opinion to the question, — Whether the verdict upon the whole information is supported by the evidence as applied to the offence charged generally? In this view of it the question will be, — Whether the defendant is brought, by the facts proved in this case, within the act of parliament on which the information is founded? [having read the 6th and 7th sections.] The act clearly contemplates other persons than hawkers, and a selling at other towns and houses than that of the dealer's residence; and that is an answer to the case said to have been determined by Mr. Baron *Wood*, if the facts of that case are correctly stated, but it is so loosely put that very little can be made of it as given in the report. I certainly am not prepared to say, that the third count of this information could be sustained under the circumstances in evidence. I proceed upon the whole information, applying the evidence to it generally, for if any count can be sustained it will be sufficient. I am of opinion that the defendant has been proved to be a person going from town to town selling goods within the meaning of the act;

and this information charges an offence within the mischief it was intended to suppress. The argument is, that the person must make a practice of doing this, and that he must go to more than one town besides that of his residence. If that were so the statute would be rendered nugatory; for a person might carry on business to any extent with impunity, provided he returns to the place of his residence after he has sold his goods, before he carries other goods to another town to sell them there, making his place of abode the *terminus a quo;* for by such means he would place himself out of the reach of this statute, and paralyse the provisions of the act. If the statute warranted such a construction, I by no means intend to say, that we should not be bound so to construe it, notwithstanding that would be the effect of it. It was said that this decision would injure the internal commerce of the country. I do not think it would have any such result. The only prohibition enacted by the statute is, that persons shall not sell their goods in this manner. His lordship then concluded by distinguishing this case from those cited; and by saying, that on the whole case he was of opinion that this rule ought to be discharged. R. D.

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The Lord Chief Baron and Mr. Baron *Garrow* were absent from indisposition.

VI. Packages to be marked.

[50 G. 3. c. 41. § 14, 15.]

By stat. 50 *G.* 3. *c.* 41. § 14. Every person to whom any such licence as aforesaid shall be granted under or by virtue of this act, and who shall trade with or under colour of such licence, shall cause to be written, painted, or printed in large legible Roman capitals, upon the most conspicuous part of every pack, box, bag, trunk, case, cart, or waggon, or other vehicle or conveyance in which he or she shall carry his or her goods, wares, and merchandise, and of every room and shop in which he or she shall so trade, and likewise upon every hand bill or advertisement which he or she shall give out, distribute, or publish, the words '*Licensed Hawker*,' together with the number, name, or other mark or marks of distinction so written or printed upon his or her licence as aforesaid; and that every such person in any respect making default herein shall forfeit for every offence the sum of 10*l.* (A. D. E. F. G.)

50 G.3. c.41. Packages of hawker to have the words 'Licensed Hawker,' &c.

Penalty.

§ 15. If at any time after the 1st of *August*, 1810, any person, other than to whom such licence shall have been so granted as aforesaid, shall write, paint, or print, or cause to be written, painted, or printed, or kept or continue written, painted, or printed, upon any pack, bag, box, trunk, case, cart, waggon, or other vehicle or conveyance for any goods, wares, or merchandise, or in any room or shop in which he or she shall sell or expose to sale, or keep for sale, any goods, wares, or merchandise, the words *licensed hawker* or *licensed pedlar*, or any other word or words to that effect, any person so offending herein shall forfeit for each offence the sum of 10*l.* (B. D. E. F. G.)

Persons not licensed using such words.

Penalty.

VII. Dealing in smuggled Goods.

[50 G. 3. c. 41. § 16.]

50 G.3. c.41. Hawkers dealing in smuggled goods shall forfeit their licence.

By stat. 50 *G.* 3. *c.* 41. § 16. If any hawker, pedlar, petty chapman, or other trading person as aforesaid, shall from and after the first of *August*, 1810, be convicted of knowingly dealing in, vending, or selling any kind of smuggled, contraband, or prohibited goods, wares, or merchandise, or knowingly dealing in, vending, or selling any goods, wares, or merchandise fraudulently or dishonestly procured, either by themselves or through the medium of others, with their privity and knowledge, every such hawker, pedlar, petty chapman, or trading person, shall from and after such conviction forfeit his or her licence, and for ever thereafter be incapable of obtaining or holding any new licence, or dealing, trafficking, or trading under the same; and over and above all such forfeitures and incapacities, fines and penalties, to which he or she is or shall be by law subject and liable for such illicit and illegal trafficking and dealing.

VIII. Trading contrary to or without a Licence, or refusing to produce it.

[50 G. 3. c. 41. § 17. 20.]

50 G.3. c.41. Hawkers trading contrary to licence.

By stat. 50 *G.* 3. *c.* 41. § 17. If any such hawker, pedlar, or petty chapman, or other trading person so travelling as aforesaid, shall after the 1st of *August*, 1810, trade as aforesaid without, or contrary to, or otherwise than as shall be allowed by such licence, such person shall for each and every such offence forfeit the sum of 10*l.* to be recovered (C. D. E. F. G.) and applied as hereinafter mentioned; and if any person trading under or by virtue of any licence to him or her granted as aforesaid, upon demand made by any person or persons authorised or appointed

Penalty.

ing person as aforesaid, who shall be found trading without a ice contrary to this act, or who being found trading shall re- or neglect to produce to such person or persons a licence ac- ling to this act, after being required so to do for a reasonable , in order to give notice to a constable, headborough, tithing- , or other peace officer or officers, who are hereby required to y such person so seized, unless they shall in the meantime luce their respective licences, before some one of H. M.'s jus- of the peace of the county or place where such offence or ices shall be committed; which said justice of the peace is by authorised and strictly required to examine into the fact icts charged; and upon the proof, either by confession of the y offending, or by the oath of one or more credible witness or esses (which the said justice is hereby empowered to admi- r), that the person so brought before him had so traded as esaid, and no such licence being produced by such offender re the said justice, to convict (E) the offender so trading out a licence; and thereupon it shall be lawful for such jus- , and he is hereby required, by warrant under his hand and to cause the said sum of 40*l.* to be levied by distress (F) sale of the goods, wares, or merchandise of such offender or ders, or of the goods which (*a*) such offender or offenders shall ound trading as aforesaid, rendering the overplus, if any be, ne owner or owners thereof, after deducting the reasonable ges for making such distress, and out of the said sale to pay said respective penalties and forfeitures aforesaid; and in the ntime to commit (G) such offender to the common gaol or e of correction for the county, riding, division, city, liberty, , or place where the said offence shall be committed, there to ain until the said penalties and forfeitures, and the reasonable ges of taking the said distress, shall be levied by such dis- and sale as aforesaid, or until the same shall be otherwise or satisfied by such offender.

50 G.3. c.41.

cence, or refusing to produce it, may be detained and taken before a justice.

Penalty for trading without a licence.

(*a*) *Sic.* Query, 'with which?'

ex v. *Websdell*, *T.* 4 *G.* 4. 2 *B.* & *C.* 136. Conviction under 50 *G.* 3. *c.* 41. for hawking shoes without a licence. The viction set out an information, that the defendant, on, &c., at *mer* in the county of *Norfolk*, was a hawker and trading per- going to other men's houses, &c., and being such person, on the day aforesaid, at *Cromer*, carry to sell, and expose to , divers goods, wares, &c., to wit, a quantity of shoes, and was and there found trading *without any licence* so to do; where- n he was summoned, &c., and the justice did convict him of said offence, and adjudge that he had forfeited the sum of 10*l.* sessions, upon an appeal, quashed the conviction, subject to opinion of this court, upon the following case: — It was fully ved, on behalf of the appellant, that he was a shoemaker, and he was the real worker or maker of the said shoes, which he rried to sell and exposed to sale," but as it appeared from evidence that *Cromer* was not a mart, market, or fair, nor a , borough, town corporate, or market-town, the court were of ion that the conviction was good, although the words "or else- re," omitted in the 50 *G.* 3. *c.* 41., are in the 9 & 10 *W.* 3. 7. But it was objected, on behalf of the appellant, that the viction was bad in point of form; first, because in setting h the offence, it was not stated that the shoes were not of the

Since the passing of stat. 50 G.3. c.41. the manufacturer of goods is allowed to hawk them in those places only which are mentioned in the 23d sect. of that act.

The defendant was convicted in a penalty of 10*l.* for trading as a hawker, without any licence so to do: Held, that the conviction was in the proper sum.

Rex v. Webs-dell.

manufacture of the appellant; and secondly, because the conviction was under § 20. of the 50 *G.* 3. *c.* 41.; and that therefore the penalty adjudged (if any) should have been 40*l.*, and not 10*l.* And on these grounds the conviction was quashed. — After argument; *Per Bayley* J. There is much obscurity in the 50 *G.* 3. *c.* 41.; nor is it found there for the first time. It has existed from the passing of the 29 *G.* 3. *c.* 26. The 11th and 14th sections of that act are in terms the same as the 17th and 20th sections of the 50 *G.* 3. *c.* 41.; and in both these acts the same difficulty occurs as to imposing a penalty of 10*l.* or 40*l.* It has been contended that a person trading without a licence is liable to the penalty of 40*l.* imposed by the 20th sect., and is not within the 17th section, which imposes a penalty of 10*l.* If that were clear, the conviction in a penalty of 10*l.* would be bad; but the meaning of the act should be quite plain to induce us to come to such a conclusion, for if there be a doubt we should adopt that construction which will bear with the least hardship on the party convicted. In the 17th section there are three propositions: "If any such hawker shall trade *without*, or *contrary to*, or *otherwise than as shall be allowed by* such licence, he shall forfeit 10*l.*" It does not say, such hawker "having obtained a licence," and trading, &c. There are not then any words confining the operation of that section to a person having obtained a licence; and the fair meaning of the words, "shall trade without such licence," appears to be, "shall trade without having obtained a licence." In *Rex* v. *Turner*, this objection, if good, would have been decisive; yet it was never suggested, and in practice convictions are always for 10*l.* In the last edition of *Burn's Justice* a form is given in which the penalty is 10*l.*; and that is worthy of consideration, although it cannot be treated as an express authority. For these reasons I think that the words in the 17th section, "trading without such licence," are not confined to persons who have obtained a licence and travel without it. If that be the right construction, then the only question is, whether the 23d section exonerates the

wares; when the 9 & 10 *W.* 3. *c.* 27. was passed, the legislature intended that a manufacturer should be allowed to sell his own goods any where; but the same indulgence was not extended to them by the 50 *G.* 3. *c.* 41. That limited their privileges to certain places. It has been said that the 9 & 10 *W.* 3. *c.* 27. is only repealed as to the duties; but § 31. of the 50 *G.* 3. *c.* 41. shows that every provision of the former act, which would be inconsistent with the latter, was intended to be repealed. But that argument is unnecessary, for the 50 *G.* 3. *c.* 41. imposes new duties; and a person not having the licence thereby required cannot hawk at all, except in those places, and under those circumstances, particularly provided for by that act. As to the other point, it certainly appears difficult to reconcile the 17th and 20th sections of the act. But I think that the defendant was at all events guilty of an offence against the 17th section, and was therefore liable to be convicted in a penalty of 10*l.* Order of sessions quashed, and conviction confirmed. (*a*)

Rex v. Webdell.

Rex v. *M'Gill*, *T.* 4 *G.* 4. 2 *B.* & *C.* 142. The defendant was convicted under stat. 50 *G.* 3. *c.* 41. § 17. for hawking tea without a licence. The conviction stated, that on, &c. at, &c. the defendant was charged with being a hawker, &c., carrying to sell, and exposing to sale, without any licence so to do, certain goods, to wit, divers parcels of tea; and that he being such person, did, on the day and year aforesaid, at *Worcester*, carry to sell, and expose to sale, divers parcels of tea, and was then and there found trading as aforesaid, without any licence so to do. The conviction then stated the evidence; and that the justice did thereupon convict him of the same, and adjudge that he had forfeited 10*l.* Upon appeal, the justices at sessions confirmed the conviction, subject to the opinion of the court on the following case: *George M'Gill*, as the agent of *D. S.*, (which *D. S.* at the several times hereafter mentioned was a licensed tea-dealer,) on the 17th of *April*, 1822, at *Worcester*, carried to sell several packages of tea, and then and there, at the house of one *H. G.*, sold to him one of the said packages containing a quarter of a pound weight of tea; and afterwards on the same day, *G. M'Gill*, as such agent, carried to sell, and exposed to sale, at the house of one *W. P.*, another package containing also a quarter of a pound weight of tea, but did not then and there sell the same. At the several times when he, the said *G. M'Gill*, as such agent, so carried to sell, and exposed to sale, the said first-mentioned quarter of a pound of tea, neither he, nor *D. S.*, his employer, had any hawkers' licence according to 50 *G.* 3. *c.* 41. — In support of the order of sessions, *Rex* v. *Turner*, (*ante*, p. 755.) was cited as a decisive authority that agents are liable. And it was argued that, if a party be charged with trading as a hawker without a licence, it is no answer to say, that by the same act he offended against another statute also; for a man may by one act commit several misdemeanors. [*Best* J. — If an unqualified person kill game without taking out a licence, he is liable to a penalty for so doing, although a licence would not protect him from the penalty imposed upon unqualified persons.] That argument is conclusive against the defendant. — Contra. — It was contended that the defendant then should have

A person exposing to sale and selling tea, as a hawker, without a licence, is liable to the penalty imposed by the 50 G. 3. c. 41. upon hawkers trading without a licence; although, even with a licence, he would be liable to a penalty for selling tea in an unentered place.

The defendant was convicted in a penalty of 10*l.* held that it was the proper sum.

(*a*) See the next case.

Rex v. M'Gill.

been convicted under the 12 *G.* 3. *c.* 46. § 6.; and not under the hawkers' and pedlars' act, 50 *G.* 3. *c.* 41. *Cur. ad. vult.* — The judgment of the court was, on a subsequent day during the sittings, pronounced by *Bayley* J. — The question principally agitated in this case was, whether a person exposing tea to sale as a hawker was liable to the penalty imposed by the 50 *G.* 3. *c.* 41. upon persons trading as hawkers without a licence? There was also another point which might have been raised; and upon which the court delivered an opinion in *R.* v. *Websdell*, viz. whether the penalty of 10*l.* was that which ought to have been imposed. The court then thought 10*l.* the right penalty, and that opinion has been confirmed by a further consideration of the subject. As to the first point, it was argued, that inasmuch as one act of parliament had made it illegal to sell tea in any but an entered place, and another had provided that no hawker should sell tea; that, therefore, a hawker was not liable to a penalty for exposing it to sale without a hawker's licence. If the 50 *G.* 3. *c.* 41. had been the first act upon the subject, and no penalty had previously existed for trading as a hawker without a licence, there might, perhaps, have been some doubt whether it extended to any cases in which a licence would not have legalized the sale; but looking at the whole series of enactments relating to hawkers and pedlars, and taking into consideration the time when they were first prevented from selling tea, it will be plain that they are still liable to a penalty for selling it as hawkers without a licence. The first enactment respecting them was the 8 & 9 *W.* 3. *c.* 25. (*a*), which is nearly the same as the 9 & 10 *W.* 3. *c.* 27., and contains two clauses material as to the amount of the penalty to be imposed. The 17th section of the 50 *G.* 3. *c.* 41. has this provision, "that if any such hawker shall trade as aforesaid, without, or contrary to, or otherwise than as shall be allowed by such licence, such person shall, for every such offence, forfeit the sum of 10*l.*" Three terms are there introduced, "without," "contrary to," or "otherwise than as shall be allowed by," such licence; and it will hereafter

such licence as the first section requires them to take. The fifth section imposes a penalty of 50*l.* for travelling with a forged licence; and the 8th section authorises the apprehension of hawkers travelling without a licence, contrary to the act, and directs that they shall be taken before a magistrate, who, if the offence be proved, shall convict them, and forthwith direct the *said sum* of 12*l.* to be levied by distress, &c. The *said sum* of 12*l.* there manifestly refers to the penalty imposed by the third section, that being the only sum of 12*l.* which had been before mentioned; and the expressions "without a licence," and "contrary to the act," in the 8th section, are applicable to the trading without or contrary to the licence mentioned in the 3d section. The next act material to be considered on this point is the 25 *G.* 3. *c.* 78.; but in the meantime some alteration was made in the law as to the sale of tea and cambrics. The 10 *G.* 1. *c.* 10. § 14. provided, that tea should not be sold except in an entered place. By that provision the right to sell it was made local; the 9 *G.* 2. *c.* 35. § 20. enacted, that it should not be sold by any hawker and pedlar. The object of the statutes before cited, more particularly applying to hawkers and pedlars, appears to have been to protect domiciled tradesmen; of the two latter, to assist the collection of duties. The effect of them is, not to destroy the former prohibition against trading as a hawker without a licence, but to add a cumulative penalty for hawking tea, even with a licence; for the two provisions are consistent, and may well stand together. The first imposes a penalty upon persons trading at all as hawkers without a licence; the second imposes a penalty upon the sale of tea by hawkers, even with a licence; and, therefore, a person who exposes tea to sale as a hawker, and has no licence, offends against both the abovementioned provisions, and is liable to a penalty for each breach of the law. The 7 *G.* 3. *c.* 43. § 7. made cambrics found in the possession of any hawker or pedlar liable to forfeiture. Then came the 25 *G.* 3. *c.* 78., as to hawkers and pedlars, the 4th section of which resembles the 3d of the 9 & 10 *W.* 3. *c.* 27., but has this difference: the penalty was before confined to persons trading "without" or "contrary to" the licence; this enactment has the additional words "or otherwise than as shall be allowed by" such licence. That expression could only be applicable to those cases in which a licence would not legalise the trading. The 25 *G.* 3. *c.* 78. § 4. alters the penalty from 12*l.* to 10*l.*; and between the fourth section, which corresponds to the third section of the 9 & 10 *W.* 3., and the seventh section, which corresponds to the eighth section of the former act, introduces in § 6. a provision, that persons trading with a borrowed licence shall be liable to a penalty of 10*l.* In the seventh section, which, as in the former act, refers to the first penalty of 10*l.*, the expression "*said sum* of 10*l.*" is retained. The 25 *G.* 3. *c.* 78. was repealed by the 29 *G.* 3. *c.* 26., which, however, contained most of the same provisions. Thus the eleventh and fourteenth sections of the latter correspond with the fourth and seventh of the former; the thirteenth section also of the latter corresponds with the sixth section of the former, except as to the amount of the penalty, which was raised from 10*l.* to 40*l.*; and this shows how the mistake in the fourteenth section arose. In the 25 *G.* 3. *c.* 78. two penalties of 10*l.* had been imposed in different sections preceding that in which the justice is

Rex v. M'Gill. directed to cause the *said sum* of 10*l.* to be levied. In the 29 G. 3. c. 26. one of those penalties was increased to 40*l.*; and it must have been erroneously supposed that the expression *said sum* referred to that penalty which was raised, and not to that for trading without, or contrary to, or otherwise than as allowed by, the licence, which still remained a 10*l.* penalty. These sections were exactly followed in the 50 G. 3. c. 41., and in like manner the mistake crept into that act also. Upon the question, whether the defendant is liable to a penalty for selling tea, as a hawker, without a licence, we are of opinion that he is; and that the words "otherwise than as allowed by the licence," introduced into the modern acts relating to hawkers and pedlars, show that when hawkers were prevented from selling tea, even with a licence, it was not intended to exempt them from the penalty before imposed upon the sale of *any* goods, wares, &c. without a licence. For these reasons, we think that the conviction was right.—Order of sessions confirmed.

IX. Hiring or lending Licences.

[50 G. 3. c. 41. § 19.]

50 G.3. c.41. Persons hiring or lending licences. By stat. 50 G. 3. c. 41. § 19. In case any person shall let out, or hire, or lend any licence to him or her granted as aforesaid, or shall trade with or under colour of any licence granted unto any person whatsoever, or of any licence in which his or her own real name shall not be inserted as the name of the person to whom the same is granted, the person letting out to hire or lending any such licence, and the person so trading with or under colour of any licence granted to any other person, or any licence in which his or her own real name shall not be inserted as the name of the person to whom the same is granted, shall each of them forfeit the sum of 40*l.*, to be recovered and applied as hereinafter mentioned; and in case any person shall be convicted or have judgment against him for lending his or her licence

Penalty.

X. Penalty on forging Licences.

[50 G. 3. c. 41. § 18.]

By stat. 50 *G.* 3. *c.* 41. § 18. If any person shall forge or counterfeit any licence by this act directed to be granted, or travel with, or produce, or show any such forged or counterfeited licence, for any of the purposes aforesaid, every such person shall, for every such offence, forfeit the sum of 300*l.*, to be recovered and applied as hereinafter directed.

50 G.3. c.41. Penalty on persons forging or used forged licences, 300*l.*

XI. Duties of Constables.

[50 G. 3. c. 41. § 21.]

By stat. 50 *G.* 3. *c.* 41. § 21. If any constable, headborough, or tithing-man, or other officer of the peace, shall refuse or neglect, upon due notice, or on his own view, to be aiding and assisting in the execution of this act, being thereunto required, and is thereof convicted upon his confession, or by the oath of one witness, before any justice of the peace for the county or place where the offence shall be committed, he shall forfeit, for each and every such offence, the sum of 10*l.*, to be recovered and applied as hereafter mentioned.

50 G.3. c.41. Penalty on constables refusing to assist in execution of this act.

XII. Recovery of Penalties.

[50 G. 3. c. 41. § 24, 25, 26. 32.]

☞ By stat. 50 *G.* 3. *c.* 41. § 24. All pecuniary penalties incurred under this act, of a greater sum than 20*l.* shall be recovered with costs, in any courts of record at *Westminster*, by action of debt, or information, wherein no essoign, &c. and only one imparlance shall be allowed; and one moiety of every such penalty shall belong to H. M., and the other moiety to the person or persons who shall sue for the same.

50 G.3. c.41. Penalties above 20*l.* where to be recovered.

§ 25. In all cases where the pecuniary penalty by this act imposed does not exceed the sum of 20*l.*, it shall be recoverable before one of H. M.'s justices of the peace of the county, riding, shire, division, city, liberty, town, or place wherein the offence shall be committed, on proof of the offence, either by voluntary confession of the party or parties accused, or by the oath of one or more credible witness or witnesses; and one moiety of every such last-mentioned penalty shall belong to H. M., and the other moiety to the informer or informers prosecuting for the same; and in case of nonpayment, the said justice, by warrant under his hand and seal (F), shall cause the same to be levied by distress and sale of the offender's goods and chattels, or of the goods and chattels with which such offender shall be found trading; and the overplus of the money raised, after deducting the penalty and expense of the distress and sale, shall be rendered to the owner; and shall also commit (G) the offender to the prison of such county, shire, division, city, liberty, town, or place, there to remain until the said penalties, and the reasonable charges of taking the said distress, shall be levied by such distress and sale as aforesaid, or until the same shall be paid or satisfied by such offender;

Penalties under 20*l.* how to be recovered.

50 G. 3. c. 41. and it shall be lawful for any such justice of the peace, by his warrant, to cause such offender to be apprehended and brought before him, to answer to any charge or complaint for any such penalty, and to commit such offender to prison as aforesaid until the hearing of such charge or complaint, unless he or she shall and do enter into a recognisance before such justice, with two sufficient sureties, in a sufficient sum to be ordered by such justice, to appear at the hearing of such charge or complaint.

Time of commitment not to exceed three months.

§ 26. No person committed to any gaol or house of correction, for any offence committed against this act, shall be detained in such gaol or house of correction for any longer space of time than three months.

Penalty on witnesses refusing to attend or to give evidence.

§ 32. If any person shall be summoned as a witness to give evidence before any justice or justices of the peace touching any of the matters relative to this act, or stat. 9 & 10 *W.* 3. *c.* 27., and shall neglect or refuse to appear at the time and place to be for that purpose appointed, without a reasonable excuse for such neglect or refusal, to be allowed of by such justice or justices of the peace, or appearing, shall refuse to be examined upon oath and give evidence before such justice or justices of the peace before whom the prosecution shall be depending, every such person shall forfeit for every such offence the sum of 10*l.*, to be recovered, (C. D. E. F. G.) levied, and paid in such manner and by such means as are herein directed as to the other penalties.

XIII. Of Appeal.

[50 G. 3. c. 41. § 27.]

50 G. 3. c. 41. Appeal may be made to quarter sessions.

By stat. 50 *G.* 3. *c.* 41. § 27. If any person or persons shall find himself, herself, or themselves aggrieved by the judgment of any such justice, then he, she, or they shall or may, upon entering into recognisance with two sufficient sureties, to be approved by such justice, to the amount of the value of such

such justice of the peace hath power to convict by virtue of the present act: 50 G.3. c.41.

BE it remembered, that on the ——— day of ———, in the year of our Lord ———, at ——— in the county of———, A.B. *came before me* C. D., *one of his majesty's justices of the peace for the said county, residing near the place where the offence hereinafter mentioned was committed, and informed me that* E. F., *of ———, in the said county of ———*, [here set forth the fact for which the information is laid,] *whereupon the said* E. F., *being duly summoned to answer the said charge, appeared before me (and having heard the charge contained in the said information, acknowledged and voluntarily confessed the facts therein stated to be true); but in his* [or *her*] *defence alleged* [here setting forth the substance of the defence] *or voluntarily confessed the said charge to be true, or did not make any defence against the said charge, whereupon the same was fully proved on the oath of* G. H., *a credible witness, or said that he* [or *she*] *was not guilty of the said offence, whereupon the same was fully proved on the oath of* G. H. *a credible witness* [or as the case shall be], *or did not appear before me pursuant to the said summons, but the said charge was fully proved on the oath of* G. H., *a credible witness* [or as the case shall be], *and therefore it manifestly appearing to me that the said* E. F. *is guilty of the offence charged in the said information, I do hereby convict him* [*or* her] *of the said offence, and do adjudge that he* [or *she*] *hath forfeited the sum of ———, or his* [or *her*] *licence and the sum of ——— of lawful money of* Great Britain, *to be distributed as the law directs, according to the form of the statute in such case made and provided. Given under my hand and seal the ———.*

Convictions not to be removed.

§ 29. No conviction upon this act shall be removed by certiorari or otherwise into H. M.'s court of K. B., or any other court, save upon an appeal as by this act directed. (See § 27. p. 772.)

Justices shall transmit to the commissioners for licensing hawkers, accounts of convictions, and of the penalties belonging to H. M., and pay over the money in their hands to the clerk of the peace, who shall remit the same to the commissioners, &c.

§ 30. Every justice before whom any such person shall be convicted of any offence under this act, shall receive H. M.'s share of the penalty levied or paid under such conviction; and every such justice, his executors or administrators, shall pay or cause to be paid all such sums which he shall so receive upon any conviction under this act, at the next general sessions of the peace after he shall have so received the same, into the hands of the clerk of the peace, or other such like officer for the county, riding, or place within which such conviction shall have been made, who is hereby directed to remit the same forthwith, without fee or reward, to the said commissioners for licensing hawkers, pedlars, and petty chapmen, or to such person as the greatest part of them shall appoint; and every justice, his executors or administrators, shall, immediately on such payment made to any clerk of the peace or other such officer, transmit a like schedule to the said commissioners, or to such person as they shall appoint.

Persons sued may plead the general issue.

§ 34. If any person shall be sued for any thing done in pursuance of this act, such person may plead the general issue, and give the special matter in evidence; and if a verdict shall pass for the defendant, or the plaintiff shall become nonsuited, or judgment shall be recovered against him upon demurrer, or discontinues, or be non-prossed, such defendant shall have treble costs.

A. (A) Information against a licensed Hawker for not having the Words, "*Licensed Hawker*," &c. painted upon his Pack, &c., pursuant to Stat. 50 *G.* 3. *c.* 41. § 14. Vide *ante*, p. 763.

County of } *THE information and complaint of* A. I., *of* ———, ——— } *in the said county,* ——— *who informs as well for our lord the now king as for himself in this behalf, made before me Sir* G. C. *baronet, one of his majesty's justices of the peace for the said county of* ———, *on the* ——— *day of* ———, *in the* ——— *year of the reign of our said lord the now king, who saith, that a certain licence now in force, subscribed by one or more of the commissioners for licensing and regulating hackney coaches, hawkers, and pedlars, was at a certain day now past granted to* A. O., *late of* ———, *in the said county, to travel and trade as a hawker, pedlar, and petty chapman, under or by virtue of a certain act of parliament made and passed in the fiftieth year of the reign of his late majesty King* George *the third, intituled* An act for placing the duties of hawkers and pedlars under the management of the commissioners of hackney coaches; *and that the said* A. O., *being the person to whom such licence aforesaid was granted as aforesaid, and also being a trading person going from town to town* [or, to other men's houses], *and travelling on foot,* [or, *with a horse,* or as the case may be,] *in* England [or, *Wales*, or, as the fact may be], *carrying to sell and exposing to sale goods, wares, and merchandise, did on the* ——— *day of* ——— *in the said year of the reign of our said lord the now king, at* ———, *in the* ———, *trade with or under colour of such licence, by hawking for sale goods, wares, and merchandise, to wit* [here describe the goods], *and did then and there, to wit at* ——— *aforesaid, carry the said goods, wares, and merchandise in a pack* [or as the case may be], *and that the said* A. O. *had not then and there caused to be written, painted, or printed in large legible Roman capitals, upon the most conspicuous*

before me Sir G. C. *baronet, one of his majesty's justices of the peace for the said county of* ———, *on the* ——— *day of* ——— *in the* ——— *year of the reign of our said lord the now king, who saith, that* A. O., *late of* ———, *in the said county,* ——— *being other than any person to whom any licence subscribed by one or more of the commissioners for licensing and regulating hackney coaches, hawkers, and pedlars, to travel and trade as a hawker, pedlar, and petty chapman, under or by virtue of a certain act of parliament made and passed in the fiftieth year of the reign of his late majesty King* George *the third, intituled* An act for placing the duties of hawkers and pedlars under the management of the commissioners of hackney coaches, *had been granted under or by virtue of the said act, and being also a trading person going and travelling on foot* [or, *with a horse*, or, as the case may be], *in* England [or, *Wales*, or, as the fact may be], *carrying to sell and exposing to sale goods, wares, and merchandise, to wit,* [here describe the goods], *did on the* ——— *day of* ———, *in the said year of our Lord* ———, *at* ———, *in the said county, write, paint, or print, and cause to be written, painted, or printed, and kept and continued written, painted, or printed upon his pack* [or, as the case may be,] *and in which said pack* [or, as the case may be], *the said* A. O. *then and there carried his said goods, wares, and merchandise as aforesaid, the words* "Licensed Hawker," &c. [as the fact may be], *contrary to the form of the statute in that case made and provided; whereby and by force of the same statute the said* A. O. *hath forfeited for his said offence the sum of ten pounds; and thereupon the said* A. I., *who informs as well for our said lord the now king as for himself in this behalf, prayeth judgment of me the said justice in the premises.* A. I.

I receive this information,
G. C.

(C) Information against a Hawker for trading without a Licence [or, *as the case may be*], contrary to Stat. 50 *G.* 3. *c.* 41. Vide *ante*, p. 764. C

County of ——— to wit. } *THE information and complaint of* A. I., *of* ———, *in the said county,* ——— *who informs as well for our lord the king as for himself in this behalf, made before me Sir* G. C. *baronet, one of his majesty's justices of the peace for the said county of* ———, *on the* ——— *day of* ———, *in the* ——— *year of the reign of our said lord the king, who saith, that* A. O., *late of* ———, *in the said county, after the making of the statute made in the fiftieth year of the reign of his late majesty king* George *the third, and intituled:* An act for placing the duties of hawkers and pedlars under the management of the commissioners of hackney coaches, *to wit, on the* ——— *day of* ———, *in the said* ——— *year of the reign of our lord the now king at* ———, *in the county of* ——— *aforesaid, then and there being a hawker and trading person going from town to town* [or, *to other men's houses*, as the fact may be], *and travelling on foot,* [or, *with a horse*, or as the case may be], *in* England, *carrying to sell and exposing to sale goods as a hawker and trading person, did then and there, to wit on the day and in the year last aforesaid, at* ——— *aforesaid, in the county last aforesaid, as a hawker and*

trading person going from town to town [or, *to other men's houses*], *sell, carry to sell, and expose to sale* [or, *carry to sell*, or, *expose to sale*, as the fact may be], *certain goods, wares, and merchandises, to wit* [here describe the goods], *without having obtained the licence* [or, as the fact may be], *in that behalf directed and required by the statute in that case made and provided, in such manner as therein is directed, contrary to the form of the said statute; whereby and by force of the said statute the said* A. O. *hath forfeited for his said offence the sum of ten pounds; and thereupon the said* A. I., *who informs as well for our said lord the now king as for himself in this behalf, prayeth judgment of me the said justice in the premises.*

A. I.

I receive this information.

G. C.

D. (D) Summons on the foregoing Informations.

County of ——— to wit. } To the constable of the parish of ———, in the said county of ———.

FORASMUCH as A. I., *of* ———, *in the said county,* ——— *did on the* ——— *day of* ———, *in the year of our Lord* ———, *come before me Sir* G. C. *baronet, one of his majesty's justices of the peace of the said county, and make information that* A. O., *late of* ———, *in the said county of* ———, [here state the offence for which the information was laid, and in the words of the information]: *These are therefore to command you, in his said majesty's name, forthwith to summon the said* A. O. *to appear before me at* ———, *in the said county, on* ———, *the* ——— *day of* ———, *at the hour of* ———, *in the forenoon of the same day, to answer unto the said complaint, and further to do and receive what to law doth appertain; and be you then and there to certify what you shall have done in the execution hereof. Herein fail you not.*

Given under my hand and seal, the ——— *day of* ———, *in*

These are therefore to command you to levy the said sum of ten pounds by distress and sale of the goods and chattels of the said A. O., *or of the goods and chattels with which the said* A. O. *was so found trading as aforesaid. And I do hereby order and direct the goods and chattels, so to be distrained, to be sold and disposed of within* ——— *days, unless the said sum of ten pounds, for which such distress shall be made, together with the reasonable charge of taking such distress, shall be sooner paid. And you are also hereby commanded to certify to me what you shall do by virtue of this warrant.*

Given under my hand and seal at ———, *the* ——— *day of* ——— *in the year of our lord* ———.

G. C. (*L. S.*)

(G) Commitment thereupon for Nonpayment. G.

To the constable of the parish of ——— in the said county of ———, and to the keeper of the common gaol at ——— in the said county, or his deputy.

County of ——— to wit. } *RECEIVE into your custody the body of* A. O. *late of* ——— *in the said county,* ——— *herewith sent you, brought before me Sir* G. C. *baronet, one of his majesty's justices of the peace, in and for the said county, and charged before me the said justice upon the oath of* A. W., *a credible witness, for that he the said* A. O. [here state the offence in the words of the information], *and upon full consideration had thereon I the said justice have duly convicted him of the said offence, and have adjudged him to forfeit and pay for his said offence the sum of ten pounds of lawful money of* Great Britain, *which said sum of ten pounds having been demanded of him the said* A. O. *by me the said justice, and he not having forthwith paid the said penalty, and him therefore safely keep in your custody until the said sum of ten pounds shall be levied by distress and sale of the goods and chattels of the said* A. O., *or of the goods and chattels with which he was so as aforesaid found trading, together with the reasonable costs and charges of taking such distress, or until the same forfeiture shall be otherwise paid or satisfied, provided that the time of* such imprisonment shall not exceed the space of three months; *and for so doing this shall be your sufficient warrant.*

Given under my hand and seal, this —— *day of* ———, *in the year of our Lord* ———.

N. B.— As most of the proceedings for the recovery of penalties under these laws are conducted by the riding surveyors and other officers of the hawkers' department of the hackney coach office, who are generally provided with a small work, entitled *The Law of Hawkers and Pedlars, by a County Magistrate,* where the precedents are so numerous as to apply to every possible case, it has been thought unnecessary to repeat them in these pages.

Hawks and Hawking. See Game.

Hedge-breaking.

[7 & 8 G. 4. c. 30.]

7 & 8 G. 4. c. 30. Destroying, &c. any fence, wall, stile, or gate.

BY stat. 7 & 8 *G.* 4. *c.* 30. § 23. If any person shall unlawfully and maliciously cut, break, throw down, or in anywise destroy any fence of any description whatsoever, or any wall, stile, or gate, or any part thereof respectively, every such offender, being convicted before a justice of the peace, shall for the first offence forfeit and pay, over and above the amount of the injury done, such sum of money, not exceeding 5*l.*, as to the justice shall seem meet; and if any person so convicted shall afterwards be guilty of any of the said offences, and shall be convicted thereof in like manner, every such offender shall be committed to the common gaol or house of correction, there to be kept to hard labour for such term, not exceeding twelve calendar months, as the convicting justice shall think fit; and if such subsequent conviction shall take place before two justices, they may further order the offender, if a male, to be once or twice publicly or privately whipped, after the expiration of four days from the time of such conviction.

Note. — And note the several other provisions of this statute, as to the apprehension and punishment of offenders, and proceedings before justices, &c. inserted *ante*, tit. Fish and Fisheries, p. 438.

See also Vol. V., tit. Trespass, and Wood.

Hemp and Flax.

[33 H. 8. c. 17. — 26 G. 3. c. 43. — 27 G. 3. c. 13.]

33 H. 8. c. 17. Watering hemp or flax.

BY stat. 33 *H.* 8. *c.* 17. It shall not be lawful to any person to water any hemp or flax in any river, running water, stream, brook, or other common pond, where beasts used to be watered: on pain that every person offending shall forfeit 20*s.*, half to the king, and half to the party grieved, or any other who shall sue in any court of record, leet, or law day.

26 G. 3. c. 43. 27 G. 3. c. 13. Bounty for the encouragement of the growth of hemp and flax.

By stat. 26 *G.* 3. *c.* 43. For the encouragement of the growth of hemp and flax in *England* yearly, a sum not exceeding (6335*l.* 15*s.* 27 *G.* 3. *c.* 13. § 65.) at the rate of 3*d. per* stone of hemp, and 4*d. per* stone of flax, was directed to be raised in the year 1787, and for every subsequent year, to be paid to the grower, or other person who breaks or properly prepares the same for market. And certain regulations relative thereto were placed under the cognisance of the justices at sessions. But the act was to continue in force for seven years only; and from thence to the end of the next session of parliament.

Herring Fishery. See Fisheries.
Hides and Skins. See Leather.
High Constable. See Constable.
High Treason. See Treason.

Highways in general.

NOTE.— Bridges repaired by the parish or township, and which consequently come under the cognisance of the surveyor of the highways, are comprehended under this title; county bridges are treated of under title Bridges, Vol. I.

I. Concerning the highways in general.

II. Concerning turnpike roads in particular.

I. Concerning the highways in general.

I. *What is a highway.*

II. *Of the special sessions to be holden for the highways.*
[13 G. 3. c. 78. — 55 G. 3. c. 68.]

III. *Appointment of Surveyors.*
[13 G. 3. c. 78.]

IV. *Who are liable to repair, and in what proportion.*

(1.) *Of the Parish.*
[34 G. 3. c. 64.]

(2.) *Of individuals bound in respect of inclosures.*

(3.) *Of prescription.*

(4.) *Of repairs by private persons.*
[13 G. 3. c. 78.]

(5). *Of the proportion.*
[13 G. 3. c. 78. — 34 G. 3. c. 74. — 42 G. 3. c. 90.]

V. *Composition instead of Statute duty.*
[13 G. 3. c. 78.— 34 G. 3. c. 74. — 44 G. 3. c. 52. — 54 G. 3. c. 109.]

VI. *Working.*
[13 G. 3. c. 78. — 34 G. 3. c. 74. — 54 G. 3. c. 109.]

VII. *Materials how to be procured.*
[13 G. 3. c. 78.]

VIII. *Removing obstructions and annoyances; carts, &c.— Drivers misbehaving.*
[1 G. 1. st. 2. c. 57. — 24 G. 2. c. 43. — 30 G. 2. c. 22. 13 G. 3. c. 78.]

IX. *Direction-posts, blocks, milestones, watermarks, and battlements of bridges.*
[13 G. 3. c. 78.]

X. *Breadth of wheels, and number of horses.*
[6 G. 1. c. 6. — 18 G. 2. c. 33. — 13 G. 3. c. 78.]

XI *Breadth, widening, changing, and diverting highways.*
[8 & 9 W. 3. c. 16. — 13 G. 3. c. 78. — 55 G. 3. c. 68.]

XII. *Assessments how to be made.*
[13 G. 3. c. 78. — 54 G. 3. c. 109.]
XIII. *Penalty of hindering the execution.*
[13 G. 3. c. 78.]
XIV. *Penalty of the surveyor for neglect of duty.*
[13 G. 3. c. 78.]
XV. *Surveyor's account.*
[13 G. 3. c. 78.]
XVI. *Presentment or indictment of highways in general.*
[13 G. 3. c. 78.]
XVII. *Presentment by a justice.*
[13 G. 3. c. 78.]
XVIII. *Levying of assessments, fines, and forfeitures.*
[13 G. 3. c. 78.]
XIX. *Appeal.*
[13 G. 3. c. 78.]
XX. *Limitation of actions.*
[13 G. 3. c. 78.]

I. What is a Highway.

Three kinds of highways.

There are three kinds of ways; (1.) A footway (*a*); (2.) A foot and horse way, which is also a pack or drift way; (3.) A foot, horse, and cart way. 1 *Inst.* 56.

Difference between a highway and a private way.

It seemeth that any one of the said ways, which is common to all the king's people, whether it lead directly to a market town, or only from town to town, and do not terminate there, but is also a thoroughfare to other towns, may properly be called a highway. 1 *Haw. c.* 76. § 1.

For there were highways before there were market towns. And if it were essential to the constituting of a highway that it should expressly lead from market town to market town, then it would follow that the lord of a market, by forfeiting or surrendering his charter, might cause that to cease to be a highway which was a highway before; or the king, by granting a market in any place where there was no market before, might thereby consequently change the way to it from a private way into a highway.

And therefore, the distinction which is taken in some books concerning this matter, seems to be very reasonable; that every way from town to town may be called a highway, because it is common to all the king's subjects; and consequently that a nuisance therein is a common nuisance, and punishable by indictment; but that a way to a parish church, or to the common fields of a town, or to a private house, or perhaps to a village which terminates there, and is for the benefit of the particular inhabitants of

(*a*) There is no doubt that a public *footway* or *bridleway* is a highway. — *Vide Allen* v. *Ormond*, 8 *East*, 4. It is a highway for foot-passengers, or for horse-passengers, &c. and the parish is bound to repair it till they can throw the onus upon others. *Per* Ld. *Ellenborough*, C.J. *R.* v. *Ink. Com. Salop*, 13 *East*, 97.

such parish, house, or village only, may be called a private way, but not a highway, because it belongeth not to all the king's subjects, but only to some particular persons, each of whom, as it seems, may have an action on the case for a nuisance therein. 1 *Haw. c.* 76. § 1. 1 *Russ.* 448.

Nuisance in and repairs of private ways.

So, if I have a private way without a gate, and a gate is hung up, an action lies upon the case, for I have not my way as I had before. *Litt. R.* 267.

So if one grant me a way, and afterwards dig trenches in it to my hinderance, I may fill them up again. *God.* 53.

But if a way which a man has, become not passable, or become very bad, by the owner of the land tearing it up with his carts, and so the same be filled with water, yet he who has the way cannot dig the ground to let out the water, for he has no interest in the soil. But in such case he may bring his action against the owner of the land for spoiling the way, or perhaps he may go out of the way, upon the land of the wrong-doer, as near to the bad way as he can. *God.* 52.

Where a prescription way is out of repair, the passengers have no right to go upon the adjacent ground.

Taylor v. *Whitehead, Doug.* 745. This was an action of trespass for breaking and entering the plaintiff's close. The defendant (*inter alia*) pleaded a right of way by prescription, through a lane of the plaintiff's contiguous to the place in question, to *Otley-bridge* on the river *Wharfe*, in *Yorkshire*, and *that the tenants and occupiers of those lands were from time whereof, &c. by reason of their tenure bound to repair the land, and the banks thereof next to the river;* that at several times the lane was out of repair and overflowed with water, so that the defendant could not use the way without imminent danger of the loss of his life and goods; and that he necessarily went over the lands adjoining as near to the said way as he possibly could, as it was lawful for him to do, &c. —— This cause was tried before Ld. *Loughborough* at *York* in 1780, and afterwards argued in the court of K. B. — By Ld. *Mansfield* Ch. J. The question is upon the grant of this way. Now, it is not laid to be a grant of a way generally over the land; but of a precise specific way. The grantor says, you may go in this particular line; but I do not give you a right to go either on the right or left. I entirely agree with my brother *Walker*, that by common law "he who hath the use of any thing ought to repair it." The grantor *may* bind himself, but here he has not done it. He has not undertaken to provide against the overflowing of the river; and for aught that appears, *that* may have happened by the neglect of the defendant. Highways are governed by a different principle. They are for the public service, and if the usual tract be impassable, it is for the general good that people should be entitled to pass in another line. See also *Bullard* v. *Harrison*, 4 *M. & S.* 387.

Otherwise as to highways.

And this was clear law established by a number of cases, particularly that of *Absor* v. *French, B. R. M.* 30 *Car.* 2. 2 *Show.* 21. *S. C. Lev.* 234. and *Hend*'s case, Sir *W. Jones*, 296. that where a common highway is out of repair by the overflowing of a river or any other cause, passengers have a right to go upon the adjacent ground. So if the water impair the banks of a navigable river, (which is indeed considered as a highway), it is justifiable

to go upon the nearest part of the field next adjoining. 1 *Ld. Raym.* 725.

How far outlets are part of the highway.

It hath been holden that if there be a highway in an open field, and the people have used time out of mind, when the ways are bad, to go by outlets on the land adjoining, such outlets are parcel of the way; for the king's subjects ought to have a good passage, and the good passage is the way, and not only the beaten track; from whence it follows, that if such outlets be sown with corn, and the beaten track be foundrous, the king's subjects may justify going upon the corn. 1 *Haw. c.* 76. § 2.

Waste lands adjoining to highways.

Waste lands adjoining to public highways are presumed, in the first instance, to belong to the owner of the adjoining land, and not to the lord of the manor, but that presumption prevails only so long as proof to the contrary is wanting. *Steel* v. *Prickett*, 2 *Stark. N. P.* 463.

Where strips of land lie between a highway and an adjoining enclosure, the *primâ facie* presumption is, that such strips of land, as well as the soil of the highway *ad medium filum viæ*, are the property of the owner of the enclosure; but the presumption is to be confined to that extent, for if the narrow strip be contiguous to, or communicate with open commons or larger portions of land, the presumption is either done away or considerably narrowed, for the evidence of ownership which applies to the larger portions, applies also to the narrow strip which communicates with them. *Grose* v. *West and others*, 7 *Taunt.* 39.

How far a river may be a highway.

In books of the best authority a river common to all men is called a highway. 1 *Haw. c.* 76. § 1.

To whom the freehold of a highway belongeth.

The freehold of the highway is in him that hath the freehold of the soil; but the free passage is for all the king's liege people. 2 *Inst.* 705. And see Sir *John Lade* v. *Shepherd*, *infra*.

The king has nothing but the passage for himself and his people; for the freehold and all profits belong to the owner of the soil, and all the trees upon it and mines under it, which may be extremely valuable. 1 *Burr.* 143.

What is a dedication to the public.

Sir *John Lade* v. *Shepherd*, 2 *Str.* 1004. Upon trial of an action of trespass, a case was made that the place where the supposed trespass was committed was formerly the property of the plaintiff, who some years since built a street upon it, which has ever since been used as a highway; that the defendant had lands contiguous, parted only by a ditch, and that he laid a bridge over the ditch, the end whereof rested on the highway. It was insisted for the defendant that by the plaintiff's making it a street, it was a dedication of it to the public; and therefore, however he might be liable to an indictment for a nuisance, yet the plaintiff could not sue him as for a trespass on his private property.—But by the court: It is certainly a dedication to the public, so far as the public has occasion for it, which is only for a right of passage; but it never was understood to be a transfer of the absolute property in the soil. So the plaintiff had judgment.

Where the owners of the soil suffered the public to have the free passage of a street in *London*, though not a thoroughfare, for eight years without any impediment (such as a bar set across the street, and shut at pleasure, which would show the limited right of the public), it was held a sufficient time for presuming a dedication of the way to the public. And though, if the land had

been under lease during that time, or even for a much longer period, the acquiescence of the tenant would not, it seems, have bound the landlord, without evidence of his knowledge. *Trustees of the Rugby Charity* v. *Merryweather*, 11 *East*, 375. *in the note.* — *Et vide per Mansfield*, C. J. 5 *Taunt.* 142.

Yet it has been held that where a way has been used by the public for a great number of years over a close in the hands of a succession of tenants, the privity of the landlord, and a dedication by him to the public, may be presumed, although he was never in the actual possession of the close himself, and he is not proved to have been near the spot. *R.* v. *Barr*, 4 *Campb.* 16.

And in this case it was also held, that where a way has been so used, notice of the fact to the steward is notice to the landlord. S. C.

In *R.* v. *Lloyd*, 1 *Campb.* 260., which was an indictment for obstructing a highway, it was said by Lord *Ellenborough* C. J., that although a place be not a thoroughfare, yet if the owner of the soil throw open a passage, and neither marks by any visible distinction that he means to preserve all his rights over it, nor excludes persons from passing through it by positive prohibition, he shall be presumed to have dedicated it to the public, and *that*, although the passage were originally intended for private convenience, when the public have been long allowed to use it without interruption.

In *Lethbridge* v. *Winter*, *Somerset Spring Assizes*, 1808, 1 *Campb.* 263. (n.) Trespass was brought for entering plaintiff's close and pulling down a gate. — Plea, that it was a public footway, and the gate wrongfully erected across the same. — Evidence, that the gate had been recently put up in a place where a similar gate had formerly stood, but where for the last twelve years there had been none. It was contended for the defendant, that from suffering a gate to be down so long, and permitting the public to use the way without obstruction for so many years, the plaintiff and those under whom he claimed must be considered as having completely dedicated the way to the public, and that the gate could not be replaced. Under the direction of the judge, a verdict was found for the plaintiff, and the court of K. B. refused a rule *nisi* to set it aside.

And in *Roberts* v. *Karr*, *Kingston Lent Assizes*, 1808. 1 *Campb.* 262. (n.) *Heath* J. also decided the same point, *viz.* that the originally establishing a bar or obstruction rebuts the presumption of a dedication to the public, though it may have been down for some time.

He also said that there could not be a partial dedication to the public. 1 *Russ.* 451.

It seems also, that in every case the facts must be considered as sufficient to show that the owner meant to give the public a right of way over his soil, before a dedication by him will be presumed. Thus, in *Woodyer and another* v. *Hadden*, 5 *Taunt.* 125. when the plaintiff erected a street, leading out of a highway across his own close, and terminating at the head of the defendant's adjoining close, which was separated by the defendant's fence from the end of the street for twenty-one years, during nineteen of which the houses were completed, and the street publicly watched, cleansed and lighted, and both footways and half the horseway

paved, at the expense of the inhabitants, it was held (*dissentiente, Chambre* J.), that this street was not so dedicated to the public that the defendant, pulling down his wall, might enter it at the end adjoining to his land, and use it as a highway.

Dedication to the public. In trespass and justification under a public right of way, the locus in quo, which was not a thoroughfare, had been under lease from 1719 to 1818, but as far back as living memory could go, it had been used by the public, and lighted, paved, and watched under an act of parliament, in which it was enumerated as one of the streets in Westminster. After 1818, the plaintiff, who previously lived for 24 years in its neighbourhood, enclosed it: Held, that under these circumstances, the jury were well justified in finding that there was no public right of way, inasmuch as there could be no dedication to the public by the tenants for 99 years, nor by any one except the owner of the fee.

Wood v. *Veal*, *H.* 2 *G.* 4. 5 *B.* & *A.* 454. Trespass for breaking and entering a certain yard and close of the plaintiff, in the parish of *St. John*, *Westminster*, and pulling down his fence, &c. there erected. The defendant justified the trespass under a public right of way. At the trial at the *Westminster* sittings, after last *Mich.* term before *Abbott* C. J., it appeared that the *locus in quo*, which was called *Little Abingdon Street*, *Westminster*, was not a thoroughfare, but that as far back as living memory could go, it had been used by all persons desirous of going there, and that in 11 *G.* 3. it had been enumerated amongst other streets in the act of parliament then passed for paving, cleaning, and lighting the squares, streets, &c. of *Westminster*. That the commissioners had accordingly paved and lighted it, and that watchmen had been stationed there, &c. On the part of the plaintiff, it appeared that in the year 1719 a lease for 99 years of the plaintiff's premises, including the yard in dispute, had been granted by the then owner of the fee; which having expired in 1818, the plaintiff, in 1820, having for 24 years previously lived in the neighbourhood, erected the fence in question. The Lord Chief Justice left it to the jury to say, whether they thought there had been any dedication to the public previously to 1719, telling them, that in that case they ought to find for the defendant: but if not, then he told them, that there could be no dedication to the public, except by the owner of the fee; and that the permission by the tenants for 99 years would not bind the landlord; and that the circumstance of the lease for 99 years, which had been proved, explained, in a great degree, the use by the public, as not being referable to a dedication by the landlord. Under this direction, the jury found a verdict for the plaintiff. — On motion for a new trial, *Abbott* C. J. said, I have great difficulty in conceiving that there can be a public highway which is not a *thoroughfare*, because the public at large cannot well be in the use of it. In this case, however, I left it to the jury to consider, whether there had been a dedication to the public, telling them that a highway might exist, although it was not a thoroughfare. Nothing done by the lessee without the consent of the owner of the fee would give the right of way to the public. Here, as the land was demised by the lease of 1719, which expired in 1818, it seems to me, that the proper question to consider was, whether there had been a dedication to the public before 1719, or, subsequently to that period, with the consent of the owner of the fee. I am still of opinion that the case was presented properly to the consideration of the jury, and I think they have found a right verdict. — *Bayley* J. It is not necessary to decide upon the present occasion, whether there can be a highway which is not a thoroughfare. For the point in this case is, whether, supposing that to be so, there has been a dedication of this way to the public? Now, in order to give the public that right, it must be done with the consent of the owner of the fee; for where it is given by an individual having a limited right, it can only continue for a limited period. Here, upon the evidence, it appears that the permission

Quære, whether there can be a public highway which is not a thoroughfare?

was given, if at all, by the lessee for 99 years. I think, therefore, that the case was properly left to the jury, and that they have found a proper verdict. — *Holroyd* J. The opinion of Lord *Kenyon* in the *Rugby Charity* v. *Merryweather*, 11 *East*, 375. (*n.*) (*ante*, p. 783.) is somewhat shaken by the observations of Ld. C. J. *Mansfield* in *Woodyer* v. *Hadden*, 5 *Taunt.* 142. (*ante*, p. 783.) But it is not necessary to determine that question here, for this case has been determined upon principles which assume the case of the *Rugby Charity* v. *Merryweather* to be good law. — *Best* J. I am quite satisfied with the verdict which the jury have found in this case, and with the manner in which the question was left to them. No man has a greater respect for the learned judge who decided the case of the *Rugby Charity* v. *Merryweather* than I have, but I think that that decision was a departure from principles usually received in the law. If a road be for the accommodation of particular persons only, it is not a public road; and, therefore, I can see no reason why the inhabitants in a street which is not a thoroughfare should not put up a fence at the end of it and exclude the public. It is not, however, necessary to decide that question in this case, because, independently of it, the plaintiff was entitled to the verdict. R. R.

Wood v. Veal.

Rex v. *The Inhab. of the Parish of St. Benedict, in the Town and County of Cambridge*, *E.* 2 *G.* 4. 4 *B.* & *A.* 447. Presentment in the usual form, by a magistrate against the defendants, for not repairing a highway. Plea, not guilty. The case was tried at the *Cambridge Lent Assizes*, 1820, before *Graham* B., when a verdict was found for the crown, subject to the opinion of the Court of K. B. on the following case: — The road, which was proved to be out of repair, was situate in the defendants' parish, and was originally made under the provisions of a local act passed in the 41 *G.* 3. By a clause in that act the commissioners were directed to set out two specific private roads, therein particularly described, which, when set out, were to be used by such persons only as were entitled to use an old occupation-road, running in the same direction with the latter of the two roads. The commissioners acting in execution of this power, by their award, dated *June* 27. 1803, set out the road presented as one of these two roads. From the date of the award, however, until the finding of the presentment, the road had been used by the public without interruption as a carriage-way. The question was, whether under these circumstances this was a public road which the parish was bound to repair? After argument, in which the cases of *The Trustees of the Rugby Charity* v. *Merryweather*, (11 *East*, 375.) *The King* v. *The West Riding of Yorkshire*, (2 *East*, 342.) *and Rex* v. *Lloyd*, (1 *Camp.* 260.) were cited, *Abbott* C. J. said, — I am of opinion that this was not a public road, and that the parish are not bound to repair it. It was in this case, as appears from the clause in the local act, compulsory on the owner of the soil to permit a qualified passage, viz. to all persons entitled to use the old occupation-road. That circumstance distinguishes this from the cases cited. If this be a public road, it would follow that wherever, under an enclosure act, an occupation-road was set out, and it happened to be convenient for passage, it would become, almost immediately, a public road, and the burden of repairing it would be thrown on the parish. — *Bayley* J. I do not accede to the doctrine, that

Rex v. Inh. of St. Benedict, Cambridge. Where a road was set out by the commissioners under a local act, and certain persons only were by the act to use it, but in fact it had been used by the public for many years, it was held that this was not sufficient evidence of a dedication to the public; and that if it was, there being no evidence that the parish had acquiesced in that dedication, it was not a public road which the parish were bound to repair.

Rex v. Inh. of St. Benedict, Cambridge.

because there is a dedication of the road by the owner of the soil, and the public use it, that the parish is therefore bound to repair. I think there ought to be, in addition to that, evidence of an acquiescence by the parish in that dedication. In the case of bridges, there always is what is to be considered as an acquiescence by the county. The county is not liable except for bridges made in *highways*; the making of the bridge, and thereby obstructing the road while the bridge is making, may be treated as a nuisance, and the county may, if it think fit, stop its progress by indictment, and the forbearing to prosecute in that way is an acquiescence by the county in the building of the bridge. But in the case of a parish, they have no power to prevent the opening of a road, or to obstruct the public use of it. It would be most unjust if, by the public use of what was at first a private road, the burden of repairing it could be removed from the persons to whom the use of it was at first confined, and cast upon the parish. Admitting, therefore, that in this case there was a dedication to the public (which, I think, does not sufficiently appear), and the road was found to be a public benefit, (which I am not sure is the case,) I think that in consequence of the want of some act of acquiescence or adoption by the parish, they are not liable to the repair of this road. *Holroyd* and *Best* Js. concurred. Judgment for the defendants.

Marquis of Stafford v. Coyney.

The Marquis of Stafford v. *Coyney*, 7 *B. & C.* 257. The plaintiff had suffered the public to use for several years a road through his estate for all purposes, except for carrying coals; and it was held that this was either a limited dedication of the road to the public, or no dedication at all, but only a licence revocable; and that a person carrying coals along the road after notice not to do so was a trespasser.

II. Of the special Sessions to be holden for the Highways.

[13 G. 3. c. 78. § 1. 69. — 55 G. 3. c. 68. § 2.]

have done in the special sessions directed to be holden in the week after the said *Michaelmas* general quarter sessions of the peace. *55 G.3. c. 68.*

By stat. 13 *G.* 3. *c.* 78. § 62. It shall be lawful for any two or more justices of the peace within their respective limits, and they are hereby empowered, from time to time, whenever they shall judge proper, to hold any special sessions, besides that which is herein-before directed, for executing the purposes of this act; and to adjourn the same from time to time, as they shall think fit, causing notice (No. I.) to be given of the time and place of holding such special sessions, and of the adjournments thereof, to the several justices acting and residing within such limits, by the high constable, or other proper officer within the same. *13 G.3. c.78. Justices may hold and adjourn special sessions whenever they think fit, upon giving notice to the other justices.*

This section is applicable to an order of justices for diverting and turning a road made under the authority of stat. *55 G.* 3. *c.* 68. § 2. *R.* v. *Justices of Worcestershire*, 2 *B.* & *A.* 228.

A special sessions here means a sitting convened by notices to the other magistrates of the division. *Per Bayley* J. S. C. *Special sessions, what.*

The notice of holding the sessions must be given to the justices by the high constable of the hundred or other proper officer; and where the notice was served on the justices by their clerk, it was held that the sessions were not duly convened. *Rex* v. *Justices of Surrey*, 5 *Barn.* & *Cres.* 241. But note that it does not appear from the report of this case, that the notice was *signed* by the high constable, or other proper officer; and *Notice of holding the special sessions.*

In *Rex* v. *Justices of Suffolk*, 6 *Barn.* & *Cres.* 110, it was held that the notice being signed by the high constable, although served on the justices by one of their clerks, was sufficient.

III. Appointment of Surveyors.

[13 G. 3. c. 78. § 1, 2, 3, 4, 5, 48. 53, 54. 70.]

By stat. 13 *G.* 3. *c.* 78. § 1. Upon the 22d day of *September*, in every year, unless that day shall be *Sunday*, and then on the day following, the constables, headboroughs, tithingmen, churchwardens, surveyor of the highways, and householders, (No. I.) being assessed to any parochial or public rate of every parish, township, or place, shall assemble together at the church or chapel of such parish, township, or place, or if there shall be no church or chapel, then at the usual place of public meetings for such parish, township, or place, at the hour of eleven in the forenoon; and the major part of them, so assembled, shall make a list (No. II.) of the names of at least ten persons living within such respective parishes, townships, or places, who each of them have an estate in lands, tenements, or hereditaments, lying within such respective parish, township, or place, in their own right, or in the right of their wives, of the value of 10*l.* by the year; or a personal estate of the value of 100*l.*; or are occupiers or tenants of houses, lands, tenements, or hereditaments, of the yearly value of 30*l.*: and if there shall not be ten persons having such qualifications as aforesaid, then they shall insert in such list the names of so many of such persons as are so qualified, as above required, together with the names of so many of the most sufficient and able inhabitants of such parish, township, or place, not so qualified, as shall make up the number ten, if so many can be found; if not, so many as *13 G.3. c.78. On Sept. 22. yearly, a list is to be made of at least ten persons, by the constables, &c. at the usual place of public meetings.* *Qualification of surveyors.*

13 G.3. c.78.

shall be there resident, to serve the office of surveyor of the highways: and the constable, headborough, or tithingman, of such parish, township, or place, shall, within three days after such meeting, transmit a duplicate of such list to one of the justices of the peace within the limit of the county, riding, division, hundred, city, corporation, precinct, or liberty, where such parish, township, or place shall lie, living in or near the same; and shall also return and deliver the original list, (No. II.) made and agreed upon at such meeting, to the justices of the peace, at their special sessions to be held for the highways within that limit, in the week next after the *Michaelmas* general quarter sessions of the peace in every year; and shall also, within three days after making the said list, give personal notices to, or cause notices in writing (No. III.) to be left at the places of abode of the several persons contained in such list, informing them of their being so named, to the intent that they may severally appear before the justices, at the said special sessions, to accept such office, if they shall be appointed thereto, or to show cause, if they have any, against their being appointed; and the said justices are hereby authorised and required to hold such special sessions at such convenient place or places, within their respective limits, as they, in their discretion, shall judge proper; and to give notice (No. I.) of the time and place where they intend to hold the same to the constables, headboroughs, or tithingmen, of every such parish, township, or place, at least ten days before the holding of the said session; and the said justices, then and there (*a*), from the said lists, according to their discretion (*b*), and the largeness of the parish, township, or place respectively, by warrant (No. VI.) under their hands and seals, shall appoint one, two, or more of such persons as aforesaid, if he or they shall, in the opinion of such justices, be qualified for the office of surveyor; if not, one, two, or more of the other substantial inhabitants or occupiers of lands, tenements, woods, tithes, or hereditaments within such parish, township, or place, living within three miles thereof, and within the same county, fit and proper to serve

A duplicate of such list shall be transmitted to one of the justices, and the original list to the special sessions, by the constable, &c.

Vide *ante*. Notices to the persons contained in the list.

The justices are to give 10 days' notice of holding special sessions to the constables, &c. and may appoint from the list such number of surveyors as they shall judge fit, if they shall, in the opinion of the justices, be qualified for the office; if not, other inhabitants or

the office of surveyor of the highways for such parish, township, or place, if any such can be found; which appointment shall by the constables, headboroughs, or tithingman aforesaid, be notified to every person so appointed by the said justices, within three days after such appointment, by serving him with the said warrant, or by leaving the same, or a true copy thereof, at his house or usual place of abode; and every person so appointed, if he accepts the said office, shall be surveyor of the highways for the said parish, township, or place, for the year ensuing, and shall take upon him, and duly execute the office aforesaid; and the said justices shall then and there give such of the said surveyors as shall personally appear before them, a charge for the better performance of their duty, according to the directions of this act: and if any of the said persons, so appointed, whose names were contained in such list, and who were served with the said notice, shall refuse or neglect to appear at the said special sessions, and accept the said office, if appointed thereto, in manner aforesaid, or shall not, within six days after being served with such warrant of appointment, signify his acceptance thereof, either in person or by writing to one of the said justices, he shall forfeit the sum of *5l.*; and in case any person so appointed by the said justices, whose name was not contained in such list, shall refuse or neglect to accept the said office, or shall not, within six days after being served with such appointment, show to one of the justices signing such appointment sufficient cause why he should not serve such office, he shall forfeit the sum of *50s.*: Provided that no person who hath been appointed and served the office of surveyor for one year, shall be liable to be appointed surveyor for the same parish, township, or place, within three years from the time of such first appointment and service, unless he shall consent thereto; but if no such list shall be made and returned, or if the said justices shall make such appointment as aforesaid, and the person or persons so appointed shall refuse to serve the said office, the said justices, or any two of them, shall and may, and are hereby required, at the said special sessions, or at some subsequent special sessions, to be held within one month after, to nominate and appoint some other person or persons to be surveyor of such parish, township, or place, whom they shall judge proper to execute that office, and shall and may fix such salary to be paid to such surveyor, to be appointed as herein last before mentioned, out of the said forfeitures, and all other forfeitures, fines, penalties, assessments, and compositions, to be paid, levied, and raised, under the authority of this act, within such parish, township, or or place respectively, as such justices shall think fit, not exceeding one eighth part of what shall have been raised by an assessment of *6d.* in the pound, for the use of the highways within such parish, township, or place, where any such assessment shall have been raised, and observing the same restriction, as near as they can, from the best information they shall be able to get of the probable amount of such an assessment, where none hath been already made; and the said justices shall and may, if they think fit, require (No. IV.) the constables, headboroughs, tithingmen, and surveyor, of every such parish, township, and place, or any of them, to return to them at such time and place as they shall appoint, an account, in writing, (No. V.) of the sum which such assessment of

occupiers, &c. which appointment shall be notified to the persons named by the constables, &c., and the surveyor shall hold his office for one year.

Justices to give a charge for the performance of surveyor's duty.

Persons appointed from the list refusing to serve shall forfeit *5l.*; and those not in the list, on refusal, shall forfeit *50s.*

No person who hath served one year is to be again appointed for the same place within 3 years after, without his consent.

If no such list be made, or the person appointed refuses to serve, another person may be appointed, at a subsequent special sessions, and a salary fixed, not exceeding one eighth part of *6d.* assessment.

Justices may require the constables, &c. to return an account in writing of the sum

13 G.3. c.78.

which the assessment of 6*d.* per pound will raise.

40*s.* penalty on the constables, &c. not making or returning such lists, or not giving the notices required.

6*d.* in the pound hath raised, or will, in his or their opinion, raise within such parish, township, or place; and if the constables, headboroughs, tithingmen, churchwardens, surveyors of the highway, and such householders as aforesaid, of any parish, township, or place, shall neglect or refuse to make such list as aforesaid; or if the constable, headborough, or tithingman, of any parish, township or place shall not return the said list of names, when made, and such duplicate thereof as aforesaid, and give such notice or notices, and serve such warrant or warrants, as in this act is directed; or if the said constable, headborough, tithingman, and surveyor, or any of them, shall neglect to return such account of the amount of such assessment, as aforesaid, when so required as aforesaid; every constable, headborough, tithingman, churchwarden, or surveyor, so neglecting or refusing, in any of the said cases, shall, for every such default, respectively forfeit the sum of 40*s.*

§ 53. The justices of the peace of all cities, corporations, boroughs, and other places, are hereby required to put in execution every part of this act within their respective jurisdictions.

Justices of cities or boroughs not to allow salaries to surveyors, except such as shall be agreed upon at the meeting of the householders.

§ 54. Provided that nothing in this act contained shall empower any justice or justices of the peace, for any city, town corporate, or borough, to fix or allow any salary to or for any surveyor to be appointed by any such justice or justices, other than and except such salary as shall be settled and agreed upon by two parts out of three of the persons assembled in the parish, township or place, within such city, town corporate, or borough, for which such surveyor shall be appointed, pursuant to the directions of this act.

Where the justices, upon such refusal, shall appoint another person, they are to appoint one

§ 2. In all cases where the said justices, upon neglect or refusal of the person so nominated surveyor as aforesaid to accept the said office, shall appoint any other person for such surveyor, with a salary as aforesaid, the said justices shall and are hereby required to appoint one substantial inhabitant of such parish, township, or place, for assistant (No. VIII.) to such surveyor, in

13 G.3. c.78.

§ 3. The surveyor of every parish, township, and place, who shall not reside therein, but shall be appointed with such salary as aforesaid, shall, if required by the churchwarden, overseer of the poor, or any principal inhabitant of the parish, township, or place, for which he shall be so appointed surveyor, at the time of his appointment, or within fourteen days after, give a bond (*a*) (No. VII.) upon paper, without stamp thereupon, to some proper person within such parish, township, or place, to be nominated by the said justices, with sufficient surety, to account for the money which shall come to his hands as surveyor, according to the directions of this act.

Bond to be given by the surveyor appointed with a salary, to account for the money which shall come to his hands.

§ 4. The assistant, so to be nominated and appointed, shall, and is hereby required, to the best of his skill and judgment, to assist the said surveyor, whenever requested by him, in calling in and attending the performance of the statute duty; in collecting the compositions, fines, penalties, and forfeitures; in making and collecting the assessment; in making out and serving the notices authorised by this act; and in such other matters and things as shall be reasonably required of him by the surveyor, in the execution of his office as surveyor, pursuant to this act. And the said assistant shall justly and truly account with, and pay to, the said surveyor, or to his order, from time to time, according to the directions of this act, all the money which shall come to his hands as assistant, by the means as aforesaid; and in default thereof, he shall forfeit double the value of the money by him so received, and not so paid and accounted for; and if the said assistant shall wilfully neglect or make default in the performance of any of the duty required from him by this act, he shall forfeit, for every such offence, any sum not exceeding *5l.*, nor less than 40*s.*, at the discretion of the justice or justices of the limit within which such assistant shall be appointed: And the said surveyor shall, and is hereby required to send orders, in writing, upon the said assistant, for the payment of all sums due to any person or persons, for work or materials, by virtue of this act, which amount to 40*s.* or upwards; and the said surveyor shall not be responsible for any sum or sums of money which shall be received by the said assistant, and shall not be actually paid to such surveyor, or to his order.

Duty of the assistant surveyor.

Forfeitures for neglect of his duty.

Surveyors to send orders upon the assistant for payment of all sums amounting to 40*s.* or upwards.

§ 5. If two parts out of three of those so to be assembled in any such parish, township, or place, for the nomination of surveyors, as aforesaid, shall agree in the choice of any particular person of skill and experience, to serve the said office of surveyor for such parish, township, or place, and in the settling of a certain salary for his trouble therein, and shall return the name of such person, together with the list (No. II.) herein-before directed, to the justices of the peace, at their said sessions, to be held in the week next after the *Michaelmas* quarter sessions; that then, and in every such case, it shall and may be lawful for the said justices, if they shall think proper, to appoint such person to be surveyor for such parish, township, or place, and allow him the salary mentioned in such agreement, which shall be raised and paid in the same manner as the salary herein-before mentioned is directed to be raised

If two parts out of three of those assembled in any parish, &c. shall agree in the choice of a person of skill to serve the office of surveyor, and in settling his salary, justices may appoint such person, and allow him the said salary;

(*a*) For which the justices' clerk shall have sixpence, and no more. 13 *G.*3. *c.*78. § 48.

13 G.3. c.78.

and if any surveyor shall die, or become incapable of executing the office, the justices may appoint another person, and allow him the salary.

If more surveyors than one shall be appointed, they are all comprehended under the word 'surveyor.'

Abstract of the act to be delivered to the surveyors.

Fee for the appointment and charge.

and paid; and in case any surveyor to be appointed under the authority of this act shall die, or become incapable of executing that office, before such next special sessions for appointing surveyors, the said justices, or any two of them, shall and may, at some special sessions, nominate and appoint such person or persons as they shall think proper, to execute the said office, until such next special sessions for appointing surveyors, as aforesaid; and, if such deceased surveyor had a salary, they may allow the same salary to his successor, in proportion to the time he shall serve the said office; and if the said justices of the peace at their said special sessions, or at any time afterwards, pursuant to the powers of this act, shall appoint more than one person for surveyor of any parish, township, or place, all and every person or persons so appointed shall be comprehended under the word *surveyor* in every part of this act.

§ 70. And in order to have the contents of this act more generally communicated and known, the justices within their respective limits shall at every special sessions to be holden in the week next after the *Michaelmas* quarter sessions, procure and deliver, or cause to be procured and delivered, a printed abstract of the most material parts of this act to every surveyor to be then appointed by them, as the charge hereby directed to be given.

§ 48. 70. And the surveyor shall pay to the justices' clerks for the appointment and charge the sum of one shilling.

The appointment cannot be removed into the K. B. by *certiorari*. *Rex* v. *Justices of St. Alban's*, 3 *B. & C.* 398. An appeal lies to the sessions. *Ibid.*

IV. Who are liable to repair, and in what Proportion.

(1.) *Of the Parish.*
[34 G. 3. c. 64.]
(2.) *Of Individuals bound in respect of Enclosures.*
(3.) *Of Prescription.*
(4.) *Of Repairs by private Persons.*
[13 G. 3. c. 78.]
(5.) *Of the Proportion.*
[13 G. 3. c. 78. — 34 G. 3. c. 74. — 42 G. 3. c. 90.]

(1.) Of the Parish.

[34 G. 3. c. 64. § 1, 2, 3, 4, 5. 7.]

Parish in general to repair.

It seems to be agreed that of common right (that is, by the common law) the general charge of repairing all highways lies on the occupiers of the lands in the parish wherein they are: But particular persons may also be burdened with the general charge of repairing a highway in two cases, namely, in respect of an enclosure, or by prescription.

And to such an extent is this obligation, that if the inhabitants of a township bound by prescription to repair the roads within the township be expressly exempted, by the provisions of a road-act, from the charge of repairing new roads to be made within the

township, that charge must necessarily fall upon the rest of the parish. *R.* v. *Inh. of Sheffield*, 2 *T. R.* 106. 1 *Russ.* 465.

And upon the same principle it was holden, that if particular persons were made chargeable to the repairs of such highways by a statute lately made, and became insolvent, the justices of peace might put that charge upon the rest of the inhabitants. *Anon.* 1 *Ld. Raym.* 725. 1 *Russ.* 465.

And where a statute enacted that the paving of a particular street should be under the care of commissioners, and provided a fund to be applied to that purpose, and another statute, which was passed for paving the streets of the parish, contained a clause that it should not extend to the particular street, it was held that the inhabitants of the parish were not exempted from their common law liability to keep that street in repair; that the duty of repairing might be imposed upon others, and the parish be still liable; and that the parish were under the obligation, in the first instance, of seeing that the street was properly paved, and might seek a remedy over against the commissioners. *R.* v. *Inh. of St. George, Hanover Square*, 3 *Campb.* 222. 1 *Russ.* 465, 466.

No *agreement* can exonerate a parish from the common law liability to repair; and a count in an indictment against the corporation of *Liverpool*, stating, that they were liable to repair a highway, *by virtue of a certain agreement* with the owners of houses alongside of it, was held to be bad, on the ground that the inhabitants of the parish, who are *primâ facie* bound to the repair of all highways within their boundaries, cannot be discharged from such liability by any agreement with others. *R.* v. *the Mayor, &c. of Liverpool*, 3 *East*, 86. *And see* 3 *Bac. Abr. Highways*, (F.) 1 *Russ.* 466.

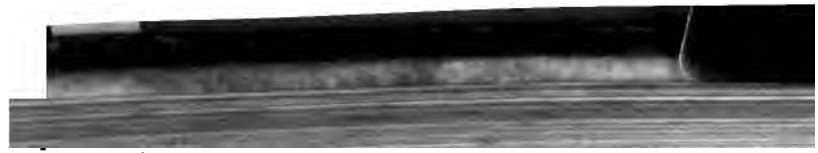
It is an incontrovertible position, that by the general law of the land, the parish at large is *primâ facie* bound to repair all highways lying within it, unless by prescription they can throw the onus on particular persons by reason of their tenure; but when that is the case, it is by way of exception to the general rule. *Per Ashhurst* J. *R.* v. *Inh. of Sheffield*, 2 *T. R.* 106. See also 2 *Saund.* 159 *b.* (*n.*)

Rex v. Inh. of Kingsmoor.

Rex v. *Inhabs. of Kingsmoor*, *T.* 1823, 2 *B. & C.* 190. Indictment stated, "that a certain way was an ancient common highway, and that a certain part situate in an extra-parochial hamlet was out of repair, and that the inhabitants of the extra-parochial hamlet ought to repair it:" Held, that this indictment was bad, as it did not allege that the inhabitants of the hamlet were immemorially bound to repair; nor that the hamlet did not form part of a larger district, the inhabitants of which were bound to repair. And *quære*, whether the inhabitants of the hamlet, being extra-parochial, would be liable to repair at common law if the indictment had contained the latter allegation? See *per Best* J., S. C. *Ibid.* p. 195.

Rex v. Inh. of Cottingham. Commissioners under an enclosure act (authorising them to set out public and private roads, which

R. v. *Inh. of Cottingham*, 6 *T. R.* 20. This was an indictment against the inhabitants of the parish of *Cottingham* for not repairing a road. By stat. 6 *G.* 3. *c.* 78. for enclosing certain common lands, the commissioners were empowered to set out both public and private roads, which public roads should be repaired in like manner as other public roads, and all *private ways* should be repaired *by such persons and in such manner* as the commissioners in their award should direct. The commissioners directed that all roads,



Lane, a gate across a part of the road leading over an ancient enclosure into the marshes, had been occasionally locked; and that the farmers holding lands in the marshes, formerly paid threepence or fourpence an acre for carrying their hay through this enclosure, when *Abbott* C. J. stopping the counsel for the crown, said, that unless the prosecutors were prepared to contradict their own witnesses, the case must end: — that a *public* highway must lead from one town or vill to another, and be *free* for the passage of all H. M.'s subjects; whereas, it was proved in evidence, that *Welch's Lane* led *only* to a farm-house, and that the occupiers of the marshes had paid toll for the liberty of bringing their hay along that part of the road over the ancient enclosure; and as to the repairs heretofore done to *Welch's Lane*, it appeared that the tenant of the farm got into the office of surveyor, and put his hand into the parish purse to repair his *own* road; this, therefore, never was a *public* highway. The general enclosure act, which passed on the same day as the *Enfield* enclosure act, *directs*, that all roads over lands to be enclosed, not set out by the commissioners, shall be deemed part of the lands to be enclosed; the commissioners did set out this road, but expressly set it out as a *private* road; the parish, therefore, was not bound to repair it. Verdict, not guilty.

R. v. Inh. of Enfield.

A record of conviction on an indictment against a parish for not repairing a road, will be conclusive evidence, on a plea of not guilty, of the liability of that parish to repair. *R.* v. *St. Pancras*, *Peake's N. P. C.* 219.

Rex v. St. Pancras.

By stat. 34 *G.* 3. *c.* 64. § 1. After reciting that it frequently happens that the boundaries of parishes pass through the middle of a common highway, and one side of such highway is situated in one parish, and the other side in another parish, whereby great inconveniences often arise in repairing the same, *it is enacted*, that two justices, on complaint (No. XLI.) of any surveyor of any parish, (stating in writing, and by a plan thereunto annexed, that there is such a highway, one side whereof ought to be repaired by one parish, and the other side by another, and particularly describing the same by metes, bounds and admeasurement thereof,) may issue their summons, (No. XLII.) with a copy of such writing and plan thereunto annexed, to the surveyor or one of the surveyors of such other parish, to appear before them on a day mentioned in such summons, not more than 14 nor less than seven days from the day of the date of such summons; and if the parties appear, such justices may then proceed finally to decide the matter in manner hereinafter mentioned, in case all the parties shall consent thereto; but in case the surveyor summoned shall not appear on such first summons, or appearing shall require further time, such justices shall adjourn the further consideration of the matter for any further time, not more than 21 nor less than 14 days from the day of such adjournment, of which the surveyor not appearing shall have notice; on which day the said justices shall proceed to hear the parties and their witnesses, and whether the party summoned does or does not appear, shall proceed to examine and finally determine the matter in form following; (*viz.*) They shall divide the whole of such highway by a transverse line crossing the same into two equal parts, or into two such unequal parts and proportions, as, in consideration of the soil, waters,

34 G.3. c.64. Highway lying in two parishes, two justices to determine what parts shall be repaired by each.

34 G.3. c.64.

floods, the inequality of such highway, or any other circumstances attending the same, they in their discretion shall think just and right; and declare, adjudge, and order (No. XLIII.) that the whole of such highway on both sides thereof, in one of such parts, shall be maintained and repaired by one of such parishes, and that the whole thereof on both sides in the other of such parts shall be maintained and repaired by the other of such parishes; and shall cause such their order, and a plan of such highway, and the allotment thereof as before mentioned, to be fairly delineated on paper or parchment, and filed with the clerk of the peace; and shall also cause such posts, stones, or other such boundaries, to be set up in such highway as they shall think necessary for ascertaining such division and allotment aforesaid.

Order, &c. to be filed with clerk of the peace.

Each parish afterwards bound to repair the parts so allotted.

§ 2. And after such order and plan shall be so filed with the clerk of the peace as aforesaid, such parishes shall be bound as of common right to maintain and keep in repair such parts of such common highway so allotted to them as aforesaid, and shall be liable to be prosecuted and indicted for neglect of such duty, and shall in all respects whatsoever be liable and subject to all the provisions, regulations, and penalties contained in any act of parliament, for the repair of the highways, in like manner as they are liable to repair any other common highway within such parishes respectively; and also shall be discharged from the repair of such parts of such highway as shall not be included in their respective allotments.

Costs of the proceedings.

§ 3. And all costs, charges, and expenses incurred, shall be defrayed by such two parishes, to be ascertained by such two justices; and if not paid, either such justices, or any other justice, may levy the same by distress and sale, with the costs of such distress, on the goods and chattels of any surveyor of the highways of the parish refusing or neglecting to pay.

Not to alter the boundaries of counties, &c.

§ 4. Provided, that nothing herein shall affect, change, or alter in any manner whatsoever, any boundaries of counties, lordships, hundreds, manors, or any other division of public or private property, nor the boundaries of any parishes, otherwise than for the purpose of repairing such particular portion of the highways in the manner herein-before mentioned.

Not to relate to highways repaired by bodies politic, tenure, &c. without consent.

§ 5. Nothing herein shall relate to highways repairable by bodies politic or corporate, townships, or other such places or private persons, by reason of tenure of lands, or otherwise howsoever, but shall be construed to relate to such highways, the repair of which belongs to parishes only; unless such bodies or persons be desirous that the same shall be placed under the regulations of this act; in which case such two justices may proceed therein in like manner as is herein directed with respect to parishes.

Appeal.

§ 7. Either of the two parishes, by an order in vestry specially called for the purpose, may appeal to the next quarter sessions of the county where such parishes shall lie after such order and plan are filed as aforesaid, who may make such order as shall appear to them to be just, either by affirming, quashing, or amending the order of the two justices; and shall allow costs to either party as they shall think right; which order of sessions shall not be removed by *certiorari* or otherwise, but shall be final to all intent and purpose whatsoever.

Certiorari.

(2.) Of Individuals bound in respect of Enclosure.

A man may be bound to the repair of a highway in respect of an enclosure of the land wherein it lies; as where the owner of lands not enclosed, next adjoining to the highway, enclose his lands on both sides thereof; in which case he is bound to make a perfect good way, and shall not be excused for making it as good as it was at the time of the enclosure, if it were then any way defective; because before the enclosure, the people used, when the way was bad, to go for their better passage over the fields adjoining out of the common tract, which liberty is taken away by the enclosure. 1 *Haw. c.* 76. § 6. Repairing in respect of an enclosure.

Note. — *See* post, *this title, Sect. XI. as to enclosure by act of parliament.*

And if the way is not sufficient, any passenger may break down the enclosure, and go over the land, and justify it, till a sufficient way be made. 3 *Salk.* 182.

Also it hath been holden, if one enclose land on one side, which hath been anciently enclosed on the other side, he ought to repair all the way; but if there be not such an ancient enclosure of the other side, he ought to repair but half that way. 1 *Haw. c.* 76. § 7.

Therefore, if there be an old hedge time out of mind on one side of the way, and a person having land on the other side make a new hedge, such person shall be charged with the whole repair. 1 *Sid.* 464.

But if one person make an hedge on one side of the way, and another person make an hedge on the other side of the way, they shall be chargeable to the repair thereof by moieties. *Ib.*

But it is said that wherever one is bound to repair a highway, or part thereof, in respect of an enclosure, and he lays it open again as it was before, he shall be freed from the charge of such repair. 1 *Hawk. c.* 76. § 7.

(3.) Of Prescription.

A particular person may be bound to repair a highway in respect of a prescription; and it is said, that a corporation aggregate may be compelled to do it, by force of a general prescription, that it ought and hath used to do it, without showing that it used to do so in respect of a tenure of certain lands, or for any other consideration; because such a corporation, in judgment of law, never dies, and therefore if it were ever bound to such a duty, it must needs continue to be always so; neither is it any plea, that such a corporation have always done it out of charity, for what it hath always done, it shall be presumed to have been always bound to do. But it is said, that a person cannot be charged with such a duty, by a general prescription from what his ancestors have done, unless it be for some special reason, as the having lands descended from such ancestors, which are holden by such like service. 1 *Haw. c.* 76. § 8. Repairing by prescription.

This applies to individual persons only, and not to an aggregate body of persons who compose the inhabitants of a district or division in a parish or township. *R.* v. *Inh.* of *Ecclesfield*, 1 *B. & A.* 348. R. v. Inh. of Ecclesfield.

R. v. Inh. of St. Giles, Cambridge.

Indictment against a parish for non-repair of a highway lying within it: Plea, that the inhabitants of another parish have repaired and been used and accustomed to repair, and of right ought to have repaired: Held ill, for the plea ought to have shown a consideration.

R. v. Inhab. of the Parish of St. Giles, Cambridge, T. 56 *G.* 3. 5 *M. & S.* 260. Presentment for not repairing a highway in the parish of *St. Giles, Cambridge.* Plea, that the inhabitants of the parish of *Great St. Mary,* in the town of *Cambridge,* from time whereof, &c. until the passing of the act 37 *G.* 3. *c.* 179., have repaired, and been used and accustomed to repair, and during all that time of right ought to have repaired, and but for the passing of the said act, and the provisions therein made respecting the repairs of the said part of the said king's common highway in the presentment mentioned to be in decay, from the passing of the said act hitherto of right ought to have repaired, and still of right ought to repair, the said part of the said highway, when and as often as it hath been or may be necessary; and that by the said act, intituled, &c. it was (among other things) enacted, that the said part of the said highway (setting it out) should from and after the passing of the said act, be repaired by trustees therein mentioned; and that the inhabitants of *Great Saint Mary* should be exempted from repairing the same, in consideration of 150*l.* agreed to be contributed by them towards the expense of making and repairing the same; and that in and by the said act it was further declared, that the said act, and all the powers thereby given, should commence and take effect the day the same should receive the royal assent, and should continue thenceforth for 21 years next ensuing, and thence to the end of the next session of parliament; and that the said act is in full force. Without this, that the inhabitants of the said parish of *St. Giles* the said part of the highway ought to repair and amend, when and so often as should be necessary, as by the said presentment is above supposed, &c. Demurrer. Joinder. — After argument, Ld. *Ellenborough* C. J. said, The principle of law I take to be clear, that the inhabitants of a parish are liable of common right to repair the highways lying within it, unless they can show that this burden is cast upon some other persons, under an obligation equally durable with that which would have bound the parish, which obligation must arise in respect of some consideration of a nature as durable as the burden cast upon them. Now, in the present case, nothing of this kind appears; but all that is alleged is, that the parish of *St. Mary* has immemorially repaired. This I hold to be insufficient; and, therefore, the defendants having failed to show any consideration binding upon the persons whose liability they would needs substitute, the burden must rest with themselves. I do not go into the question touching the effect of the *exemption,* because my opinion is founded on this, that no consideration being pointed out whereby to subject the inhabitants of the parish of *St. Mary* to the reparation of a highway lying in *alienâ parochiâ,* the law will not cast this burden upon them. To hold otherwise would, I think, be raising a doubt as to the common law liability of parishes to amend their own highways. It appears to me that the defendants are liable, inasmuch as they have not shown any others who are. — *Bayley* J. There is not any case which looks to an obligation like the present. Particular persons cannot be charged by prescription without showing a consideration; but a corporation sole or aggregate may be bound to repair by usage or prescription, without more. Here I find no consideration alleged. It was suggested, that the land over which

the highway lies might originally have been dedicated to the public, in consideration that the parish of *St. Mary*, who were chiefly benefited by it, would undertake the burden of its reparation; but, upon consideration, I think that this cannot be; because the inhabitants of a parish cannot, as if they were a corporation, bind their successors; if they could, and were to become once liable, they must remain so for ever, however useless the highway might, in after ages, turn out to be. — *Holroyd* J. The only ground of distinction that can be suggested between this case and the case where particular individuals are to be charged, has been suggested; *viz.* that inasmuch as a parish is composed of a body of inhabitants which has continuance by succession in like manner as a corporation, a parish may also be charged as a corporation, although, like it, the parish, individually, is perpetually changing. It has been said that it might have been for the convenience of the parish of *St. Mary* that this land was dedicated to the public for the purpose of a highway; and that in consideration of this boon the parish might have taken on themselves the burden of its reparation. But I think, upon reflection, that this could not be a legal consideration binding on the successors, because a burden might thereby be imposed on them beyond the benefit which they were to receive; for they would have to repair the highway not only for their own use, but also for the public. This plea, then, is improperly pleaded; for when the highway lies out of the parish, a consideration must be shown. I say nothing as to the form of pleading where the highway lies within a township or division of a parish which is charged with the repairs. (See *R.* v. *Ecclesfield*, 1 *B.* & *A.* 348.) Judgment for the crown.

R. v. Inh. of St. Giles, Cambridge.

See *R.* v. *Inhab. of W. R. of Yorkshire*, 4 *B.* & *A.* 623. Vol. I. tit. Bridges.

It seems, that an indictment charging a tenant in fee simple with having used of right to repair such a way by reason of the tenure of his land, is certain enough, without adding, that his ancestors, or those whose estate he hath, have always so done; for that is implied. 1 *Haw. c.* 76. § 8.

But the indictment must set forth where those lands lie. 2 *Hale*, 181.

And in the case of *Rider* v. *Smith*, 3 *T. R.* 766. it was determined that in an action on the case for not repairing a private highway leading through the defendant's close, it is sufficient to allege that the defendant, by *reason of his possession of the said close* called, &c. and of two closes of land with the appurtenances, contiguous and next adjoining thereto, is bound to repair the said way.

Rider v. Smith.

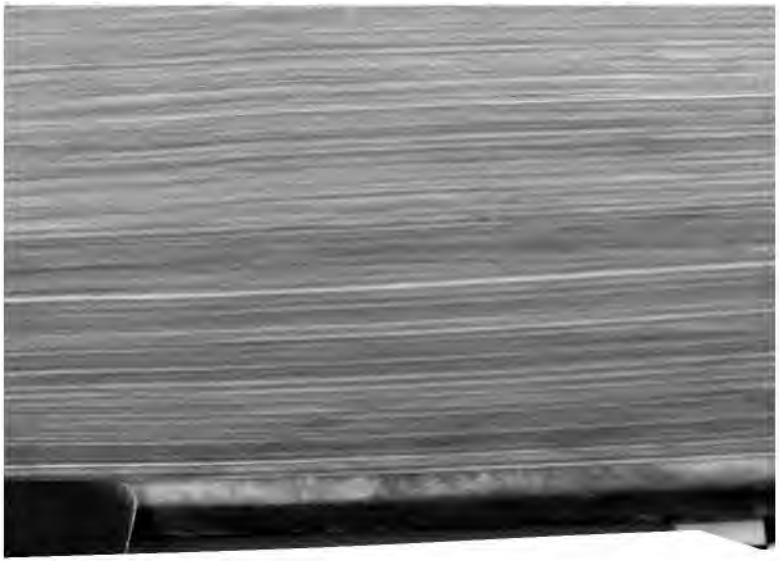
Under the head of prescription may be considered the case where, not the whole parish, but particular townships or other divisions within the parish, have for time immemorial repaired particular roads within that parish; which prescription, being ancient, and without interruption, is presumed to have had its origin by licence on an inquisition of *ad quod damnum*, or other legal commencement; and it would be very prejudicial in large parishes, if every inhabitant were liable to repair throughout that whole parish, when the time occupied in going and returning might exceed the time appointed by the law for labour.

Townships or other divisions within a parish may be liable to repair.

a plea it was not necessary to state by whom the excepted highway was repairable; and such a plea will be good, although it does not state any consideration for the liability of the inhabitants of the district. *R.* v. *Inhabitants of Ecclesfield*, 1 *Stark. N. P.* 393. 1 *B. & A.* 348. *See also Gateward's case*, 6 *Rep.* 60. *and R.* v. *Inhab. of Yorkshire*, 4 *B. & A.* 623., Vol. I., tit. Bridges, § 1.

Where in an indictment against a township for non-repair of a road, the prescription stated and proved was, that its inhabitants had been immemorially used to repair all roads situate within it, which, but for such usage, would be repairable by the parish at large: Held, that this places the township in the situation of a parish, and that it is necessary for the defendants to show by evidence some other persons in certainty who are liable, in order to deliver themselves from their liability to repair.

R. v. *The Inhab. of the Township of Hatfield, M.* 1 *G.* 4. 4 *B. & A.* 75. Indictment against defendants for non-repair of a highway. The first count alleged a prescription, that the defendants, from time immemorial, had repaired and been accustomed to repair, and of right ought to have repaired, and still of right ought to repair, as often as it should be necessary, such and so many of the common king's highways, situate within their township, as would otherwise, and but for such usage or prescription, be repairable by the inhabitants of the parish of *Hatfield* at large. The second count varied only in stating the prescription to be for the several and respective townships within the parish of *Hatfield* to repair separately from each other the several roads situate within each township, &c. respectively. Plea, general issue. At the trial at the last *York* assizes, before *Bayley* J., a verdict for the crown was found by the jury, subject to the opinion of the court of K. B., on a case which stated, that the road, a part of which formed the subject of this indictment, was one leading from *Doncaster* to *Epworth*, and other places in the county of *Lincoln*. Its course lay along a bank commonly called the *Low Level Bank*, elevated one or two feet above the adjacent country. It was bounded on one side by a large open drain, and on the other by fence ditches. This bank was made by the earth of the drain. By articles of agreement, dated 24th *May*, in the second year of the reign of *Charles* I., between that king and *Cornelius Vermuyden*, esquire, which recited that the king was seised in fee of *Hatfield Chase* and *Ditch Marsh*, and of divers manors and lands adjoining, and that certain lands, wastes, commons, and waste grounds, situate, lying, and being upon each side of the river *Idle*, and abutting on the rivers *Dun* and *Ayre* to the north, and the river *Trent* towards the south, being parcel of the said premises, and containing, by estimation, 60,000 acres, or thereabouts, were subject to be surrounded and drowned with water, in such manner that little or no benefit could be made thereof, unless special care was taken for inning and draining the same. The said articles contained an agreement on the part of *Cornelius Vermuyden* to drain these lands, in consideration of himself or his nominees having the fee-simple of one-third part of the lands when drained. In this agreement were the following clauses: — "And it is further agreed, and H. M. doth hereby declare, that the said *Cornelius Vermuyden*, and others the parties aforesaid, shall and may, at their wills and pleasures, and as to him or them shall be thought most necessary and expedient, cut, dig, and make, or cause to be made, such and so many channels, watercourses, banks, highways, sosses, sluices, and other receptacles for water, and shall have for himself and his servants, and workmen, with carts and carriages fit and convenient, free ingress and regress for the perfecting and performance of the said works, and draining the lands and grounds aforesaid, without the let, denial, hinderance, or interruption of any person or persons whatsoever, and shall also



little value, as a compensation for draining the whole. In pursuance of this agreement, the drain and bank were, in all probability, executed; and on the bank this road has since been made. I am, therefore, not at all satisfied that the road had any immemorial existence; and if so, that reduces the commencement of the repair, given in evidence, to the reign of *Charles* the first, which negatives any prescriptive liability on the part of these participants. I do not think, therefore, that the defendants have established that the participants are liable, *ratione tenuræ*. And the circumstances seem also to me to negative their liability, by reason of enclosure. Upon the whole, I am of opinion, that there must be judgment for the crown. — *Bayley* J. The prescription stated in this indictment makes the township, for all legal purposes, as to repair of roads, a parish. Then, if so, these defendants are liable, unless they can throw the burden on some other persons. I entirely agree with my Lord Chief Justice, that from the circumstances stated in this case, we cannot make the presumption, that this was an immemorial highway, or that the participants are liable to repair it *ratione tenuræ*. The repairs done by them are either referable altogether to mistake, or to a disinclination, on their part, to throw the burden on the township. — *Holroyd* J. In this case the township is, by the prescription, placed on the same footing as a parish, both as to immemorial roads, and also as to any new highways which may have been subsequently made; and, therefore, whether the road indicted be an immemorial highway or not, the defendants must repair it, unless they can show with certainty some other persons who are liable. The usage to repair, proved at the trial, would have been conclusive against the participants, unless there had been evidence to rebut it. That evidence, however, seems to me to be satisfactory. Here the wastes and commons originally surrounded by rivers were drained, and one-third part of them was allotted as a reward to *Vermuyden*, for the drainage. This formed a new division, which had not existed before, and the repairs proved are only co-extensive with that new division. It seems to me, therefore, to follow, as a very strong presumption, that the usage to repair could not have any existence, previously to the drainage, but commenced at that time; for if it had commenced before, in all probability other lands, as well as those of the participants, would have also been chargeable. I think, therefore, that the defendants have failed in making out, that the participants are liable, *ratione tenuræ*. As to their liability, *ratione clausuræ*, it appears on the evidence, that the road was contemporaneous with the enclosure. But if it were clear, that the fence-ditches were made at a subsequent period, still that would not make the participants, as a body, liable, but only those persons who actually made and continued the enclosure; and we have no evidence to show who those persons were, or that they ever repaired the road. Judgment for the crown. R. v. Inh. of Hatfield.

(4.) Of Repairs by private Persons.

[13 G. 3. c. 78. § 23. 51.]

By stat. 13 *G.* 3. *c.* 78. § 23. Every surveyor shall, from time to time, give information (No. LVII.) upon oath to the justices, or 13 G. 3. c. 78. Justices, on in-

13 G.3. c.78. formation of surveyor, may order highways, liable to be repaired by tenure, &c. to be repaired within a limited time; and if not repaired within that time, may present them.

any two of them, of all such highways, and of all bridg ways, or pavements, upon such highways, as are out of re ought to be repaired by any person or persons, bodies corporate, by reason of any grant, tenure, limitation, or ment, of any charitable gift, or otherwise howsoever; and justices shall limit a time for repairing the same, of whi shall be given by the said surveyor to the occupier or occ the lands or tenements liable to the burden of such repai such other person or persons, bodies politic or corpora chargeable with the same; and if such repairs shall not tually made within the time so limited, the said justices are hereby required to present such highways, bridges, ca or pavements, so out of repair, together with the person o bodies politic or corporate, liable to repair the same, a general quarter sessions of the peace for the limit whe highway shall lie, and the justices at such quarter sessio they see just cause, direct the prosecution to be carried general expense of such limit, and to be paid out of th rates within the same.

Persons enfeoffed with lands for the maintenance of causeways, highways, and bridges, shall let them to farm at the most improved value.

§ 51. Where any lands have been, or shall be given maintenance of causeways, pavements, highways, and br such persons who are, or shall be enfeoffed or trusted such lands, shall let them to farm at the most improv value, without fine; and the justices of the peace, in t sessions, shall enquire, by such ways and means as they s fitting, into the value of all such lands so given, or to and order the improvement and employment of the r profits thereof according to the will and direction of the such lands, if they find that the persons so entrusted negligent or faulty in the performance of their trust, (ex lands have been given for the uses aforesaid to any colle in either of the universities of this kingdom, which have their own.)

(5.) Of the Proportion:

[13 G. 3. c. 78. § 36.—34 G. 3. c. 74. § 2. 4,—42 § 174.]

34 G.3. c.74. Proportions of statute labour.

Persons keeping a team, draught, or plough, and not occupying above 50*l.* a year in the parish where he

By stat. 34 *G.* 3. *c.* 74. § 4. (*a*) The surveyor, toge inhabitants and occupiers of lands, tenements, wood hereditaments, shall, at proper seasons in every ye endeavours for the repairs of the highways, and sha able thereto as followeth; (that is to say,) every per waggon, cart, wain, plough, or tumbrel, and *three* or beasts of draught, used to draw the same, shall keep a *team*, *draught*, or *plough*, and be liable to duty with the same, in the parish, township, or resides; and shall, six days in every year, (if so be found necessary,) to be computed from *Micha*

(*a*) By this statute, which was passed to explain and am the General Highway Act, 13 *G.* 3. *c.* 78. respecting statut § 7., that all the clauses, powers, and provisions contained (except such as were thereby repealed or altered) should same manner as if they were re-enacted in that act.

vas, send, on every day and at every place, to be appointed by he surveyor for the amending the highways in such parish, township, hip, or place, *one* wain, cart, or carriage, furnished after the :ustom of the country with oxen, horses, or other cattle, and all ther necessaries fit to carry things for that purpose, and also *wo able men* with the same; which duty so performed, shall :xcuse every such person from his duty in such parish, township, r place, in respect of all lands, tenements, woods, tithes, or here-litaments, not exceeding the annual value of *50l.*, which he shall ccupy therein. 34 G.3. c.74.

resides, shall send for six days one carriage and two men.

§ 4. Every person keeping such team, draught, or plough, and ccupying in the *same* parish, township, or place, lands, tenements, roods, tithes, or hereditaments, of the yearly value of *50l.*, *over nd beyond* the said yearly value of *50l.* in respect whereof such eam duty shall be performed;—and every such person occupying nds, tenements, woods, tithes, hereditaments, of the yearly alue of *50l.*, in any *other* parish, township, or place, besides that herein he resides;—and every other person *not* keeping a team, raught, or plough, but occupying lands, tenements, woods, tithes, r hereditaments, of the yearly value of *50l.*, in any parish, township, or place;—shall in like manner respectively, and for the ame number of days, find and send one wain, cart, or carriage, rnished with not less than *three horses* or four oxen, and one orse or two oxen, and two horses and *two able men* to each wain, art, or carriage, and in like manner for *every 50l. per annum* espectively, which every such person shall further occupy in any uch parish, township, or place, respectively; such wains, carts, r carriages, to be employed by the surveyor in the repairing and mending the highways within the parish, township, or place, here such lands, &c. shall respectively lie.

If occupying *50l.* a year, above *50l.* a year in the same parish; or *50l.* a year in another parish.

§ 4. Every person who shall *not* keep a team, draught, or plough, ut shall occupy lands, tenements, woods, tithes, or hereditaments, *nder* the yearly value of *50l.* in the parish, township, or place here he resides, or in any other parish, township, or place;—nd every person *keeping* a team, draught, or plough, and occupy-ng lands, &c. under the yearly value of *50l.* in any *other* parish, wnship, or place than that wherein he resides;—shall respec-vely contribute to the repair of the highways, and pay to the rveyor, in lieu of such duty, the sums following:—See Stat. 4 *G.* 3. *c.* 109. § 5. *post.*

Persons not keeping a tea draught, or plough; or keeping one, and occupying lands in another township, shall pay a sum in lieu.

§ 4. Provided that no person keeping such team, draught, or lough, and performing duty with the same as aforesaid in the arish, township, or place where he resides, and not occupying nds, tenements, woods, tithes, or hereditaments, within the same f the yearly value of *30l.*, shall be obliged to send more than *one* bourer with such team, draught, or plough.

Keeping a team, and not occupying *30l.* a year.

§ 2. Every person who shall not keep a team, draught, or lough, but shall keep one or more *cart* or *carts*, and one or two orses or beasts of draught only, used to draw in each of such arts upon the highways, shall be obliged to perform his statute uty for the like number of days with such cart or carts, and orse or horses, or beasts of draught, and *one labourer* to attend ach cart; or to pay for the lands, tenements, woods, tithes, and ereditaments which he shall occupy, according to the rate herein-ter mentioned, at the option of the surveyor.

Keeping one or more carts, and one or two horses, &c. only.

34 G.3. c.74. Team-duty may be exchanged for labourers.

§ 2. And if the teams, drafts, or ploughs, or any of them, shall not be thought needful by the surveyor on any of the said drays, then every such person who shall have sent any such team, draught, or plough, according to the directions aforesaid, shall, according to the notice given to him by the surveyor, send unto the said work for every one so spared three able men; or pay 4*s.* 6*d.* in lieu thereof, at the option of the surveyor.

13 G.3. c.78. The surveyor may call for part of a team where he thinks it necessary.

By stat. 13 *G.*3. *c.* 78. § 36. Where the employment for teams is of such sort that two horses will be sufficient for one cart, or where a stand cart with one horse shall be necessary, the surveyor may call upon any person liable to send a team, draught, or plough, by virtue of this act, who keeps one or more cart or carts, and three or more horses, to send such cart or carts, horse or horses, to perform his statute duty, as the surveyor shall find most convenient, and shall direct; and the surveyor shall allow every such stand cart and one horse as half a team, and every cart and two horses as two-thirds of a team; and if a waggon shall be found necessary for any particular business, the surveyor may require the duty, or any part thereof, to be performed with such waggon, by any person who keeps one; which directions of the surveyor shall be observed, or the person liable to perform such duty shall forfeit such sum as the duty so required of him shall bear, in proportion to the forfeiture hereby inflicted for every neglect in performing duty with a team, draught, or plough.

42 G.3. c.90. Militia-men exempted.

But by stat. 42 *G.* 3. *c.* 90. § 174. No serjeant, corporal, or drummer of the militia, nor any private man, from the time of his enrolment until his discharge, shall be compelled to serve as a peace or parish officer, or to perform any highway duty commonly called *statute work.*

V. Composition instead of Statute Duty.

[13 G.3. c.78. § 40, 41, 42. 44.—34 G.3. c.74. § 4, 5, 6.—44 G.3. c.52. § 2.—54 G.3. c. 109. § 5, 6.]

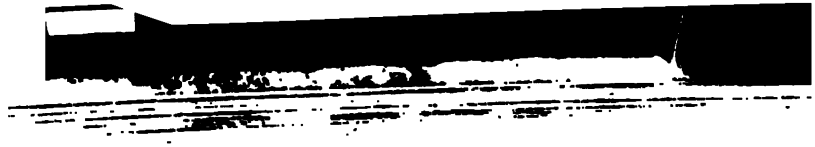
54 G.3. c.109. Composition.

By stat. 54 *G.* 3. *c.* 109. § 4. After reciting that whereas by stat. 34 *G.* 3. *c.* 74. it is enacted, that it shall be at the option of the surveyor either to require the statute duty in kind, or a composition in money in lieu thereof, at certain rates which are therein fixed: And whereas by stat. 44 *G.* 3. *c.* 52. § 2. the rates for such statute duty have been encreased, so far as respect teams, draughts, ploughs, and carts, with one or two horses: And whereas the actual wages of labour, and the actual rate of hiring teams, carts, horses, or oxen, vary at different times and in different parts of *England*; it is therefore enacted, that in all cases in which it shall be made to appear to two or more justices of the peace acting within the district, by the surveyors of the highways, or of any turnpike road, (No. LI.) that the maintenance and repair thereof can be more effectually carried on by a composition in money than by a performance of the statute duty in kind, he or they shall be at liberty to require such composition in money, upon receiving an authority (No. LII.) under the hands and seals of the said justices for that purpose, in lieu of either the whole or of any certain part of the statute duty, from the several persons who are bound by law to perform such statute duty; and the justices of the district at

their special sessions for the highways held in the week next after *Michaelmas*, yearly, shall fix such rates as they shall adjudge reasonable, as a composition in lieu of the teams, carts, horses, oxen, or labour, which such persons are bound in the proportions now fixed by law to provide or perform; which rates the said justices are hereby authorised and required annually to make known at such special sessions, due regard being had to the actual wages of labour, and to the actual rate of hiring teams, draughts, ploughs, carts, horses, or oxen, in the parish, place, or district in which such composition is required; and such composition shall be paid in the same manner, and within the same period, and subject to the same regulations and provisions, as are now by law established for enforcing the payment of compositions in lieu of statute duty: Provided always, that in case where the whole composition in money shall not be required in lieu of the whole of the duty in kind, such composition shall be demanded in fair and equal proportions from each and every person liable to pay the same, unless any of the said persons shall prefer to pay a composition for the whole of their statute duty, according to the rates fixed in the manner herein directed. 54 G.3. c.109.

Sir *Thomas Stanley, Bart.* v. *Fielden, Esq. Congreve, Esq. and Topham, H.* 2 *G.* 4. 5 *B. & A.* 425. — Trespass for seizing and taking the plaintiff's oxen, and detaining them for two days, until the plaintiff paid 31*l.* 5*s.* to regain them. *Plea* 1st, not guilty; 2dly, justification under a warrant of distress, to levy the sum of 29*l.* 5*s.* due from the plaintiff, which had been assessed upon and demanded of him, as a composition in lieu of the statute duty that he was liable to perform, as occupier of lands in the township of *Hooton*. *Replication*, that the defendants committed the trespasses of their own wrong. At the trial at the *Spring Assizes* for the county of *Chester*, 1821, it appeared that the cattle, for the detention of which this action was brought, were seized by the defendant, *Topham*, under a warrant of distress, granted by *Fielden* and *Congreve*, who were magistrates acting for the hundred of *Wirral*, in the county of *Chester*. The warrant was to levy a sum of money for the proportion of statute duty due from the plaintiff, as owner of lands in the township of *Hooton*. It was given in evidence on the part of the plaintiff, and was as follows: "Whereas by an assessment made upon the occupiers of lands, &c. within the township of *Hooton*, in the district and hundred of *Wirral*, in the county of *Chester*, for the purpose of raising a composition in money, in lieu of the statute duty in kind, for the maintenance and repair of such part of the road and highway leading from the city of *Chester* to the *Woodside Ferry*, in the township of *Birkenhead*, in the county of *Chester*, as is situate within the township of *Hooton*, pursuant to an order or authority of two justices acting for the said district and hundred for that purpose, according to the directions of the statute in that behalf: Sir *T. Stanley*, Bart., was charged the sum of 29*l.* 5*s.*, as his share and proportion of the said assessment, in respect of the lands, &c. which he occupied within the township of *Hooton*; and whereas it appearing to *R. Congreve* and *J. Fielden*, esqrs., being justices of the peace for the county of *Chester*, acting for the district and hundred of *Wirral*, upon the application of *J. Johnson*, one of the surveyors of the highways of the township of *Hooton*, that the said sum of 29*l.* 5*s.* had

Two magistrates authorised the surveyor of a turnpike road which ran through 29 townships, to collect for the repair of the road a composition in lieu of the statute duty. The surveyor was not examined upon oath as to the necessity of the composition. He afterwards made an assessment of 6*d.* in the pound upon the annual value of the lands of a particular township through which the turnpike road passed. The sum to be collected under the assessment was the utmost which the surveyor of the turnpike roads could in any case demand from the inhabitants of the township, and much exceeded



returned the list required to *Crackenthorpe*, and in that return the plaintiff was mentioned as the owner and occupier of lands and tithes of the yearly value of 1170*l.* The turnpike surveyor then made an assessment upon the whole annual value, of 6*d.* in the pound, the plaintiff's proportion of which was 29*l.* 5*s.* This assessment was made on the assumption that three days' statute duty was required to repair the roads in the township. (*a*) The whole line of road, for the repair of which the composition was required, was forty miles in extent, and passed through twenty-nine townships. At the time the demand was made upon the plaintiff, that part of the turnpike-road which passed through the township of *Hooton*, and which was only fifty-nine yards in length, was in perfect repair, and in *March*, 1820, the turnpike surveyor offered to return 26*l.* of the sum levied, and stated at the time, that in the course of that year only 3*l.* had been expended in repairing the road in that township. Mr. *Currie*, the magistrate, who, as well as the defendant *Congreve*, had signed the authority to collect the composition, proved, that he had frequently conversed with *Crackenthorpe* on the necessity of having a composition before the authority was signed, and that he had desired the clerk to the magistrates to come prepared with an authority, that he had expressed his approval of the measure, that he had frequently conversed with *Congreve*, and that they were agreed upon the expediency of the measure; the subject was within their own knowledge, and they therefore signed the authority. Upon these facts, the Chief Justice stated to the jury, that upon the evidence it had not been made to appear by the surveyors of the roads to the justices, that a composition in lieu of statute duty was necessary; that the surveyor ought at all events to have been examined in the presence of both the magistrates, whereas in fact one only had examined him, and communicated the information to the other; and as the result of the enquiry was to affect the property of many persons, it was fit that (if not on oath) it should at least be of a satisfactory nature. The jury found a verdict for the plaintiff. A rule *nisi* for a nonsuit or a new trial having been obtained in last *Easter* term, first, upon the ground taken at the trial, that the warrant contained *primâ facie* evidence of the jurisdiction of the magistrates, and therefore, that there ought to have been a nonsuit; secondly, that there was evidence given on the part of the defendant, to show that it had been made sufficiently to appear to the justices by the surveyor, that a composition was necessary instead of statute duty; and, thirdly, that at all events the defendant *Fielden* was entitled to a verdict, inasmuch as he had not signed the authority to the surveyor to collect the composition, but merely the warrant, and that he was justified in so doing, by the documents referred to in the warrants. At the time of granting the rule, the Lord

Stanley v. Fielden and others.

it should be made to appear upon oath, to both the magistrates present, that the road can be more effectually repaired by such composition. It seems, also, that where the composition is to be collected in several townships, it ought to appear on the face of the authority itself, that, in the judgment of the magistrates, a composition, in lieu of statute duty, is advisable in each particular township.

(*a*) By stat. 54 *G.*3. *c.*109. § 5. *post*, the rate of composition, in lieu of statute-duty, for every 20*s.* annual value, is to be a fiftieth part of the sum fixed by the justices as the composition for one day's labour of a cart and three horses and two able men. In this case that sum was 8*s.* 4*d.*, of which two-pence was the fiftieth part; and the whole statute duty being six days for every 50*l.* annual value, one shilling in the pound would be the sum required. But by the local turnpike act, the trustees of the turnpike road were entitled to require only three days' statute duty from the several townships through which the road ran, the composition for which would, of course, be sixpence in the pound.

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C. J. *Abbott* said, that it was important that justices should know the mode in which they are to exercise their authority. At the same time, the opinion of the court was then very strong, that wherever an act of parliament required justices to take certain steps on some matter being made to appear to them, that matter must be made to appear to them on oath. After argument against, and in support of, the rule, *Abbott* C. J.—I am of opinion that enough has not been done to legalise the demand of this specific sum of money from the plaintiff. It appears from the evidence, that there had been an adjudication of two magistrates that a composition should be paid in lieu of statute duty in kind, and also an adjudication by which the composition was fixed to be at the rate of 8*s*. 4*d*. for a cart, three horses, a driver, and a labourer. Before, however, it can be ascertained how much any individual ought to pay as a composition in lieu of statute duty, it must be ascertained in some manner and by some competent authority how many days' labour will be required to repair the road. Now that certainly has not been done here, in distinct terms, in this case. It appears upon the evidence, that the turnpike surveyor having first required, from the surveyor of the highways of the township, a list of the several persons liable to statute duty, made an assessment at the rate of sixpence in the pound upon the whole annual value returned. He seems to have taken it for granted that he was entitled to require from the several townships through which the road passed a composition for the whole statute duty which, by law, he was entitled to demand, whatever the state of the roads might be. Now, I am of opinion, that he had no such right. If there were no composition, the inhabitants of the several townships could only be called upon to do *so many days' statute duty as would be absolutely necessary for the repair of the roads;* and if a composition be called for instead of the statute duty, that composition ought to be an equivalent for that number of days' statute duty. I think, therefore, in this case, that before the demand was made upon the plaintiff, it ought to have been ascertained, by persons having competent authority for that purpose, that so many days' statute duty would be required to put the road in question into a complete state of repair, and that it ought to have been notified to the inhabitants of the parish or township, that the composition required of them, of sixpence in the pound upon the annual value of their lands, was calculated upon the principle that it would require so many days' statute duty to repair the road. That not having been done in this case, I think that the justices had no authority whatever to issue the warrant, and consequently that this rule must be discharged.—*Bayley* J. A magistrate is not to be answerable for granting a warrant, if at the time of granting it he has documents before him (which are the acts of other magistrates) from which it appears he was justified in granting the warrant. But if the want of jurisdiction is manifest from all the proceedings before him at the time, then he grants the warrant at his peril. Here, on the face of the original authority to collect the composition, there is a defect, which must have been obvious to the defendants. The composition allowed by law in lieu of statute duty, is in lieu of the statute duty required of each particular township, in respect of the roads in that township. The money to be raised, in this case, is not to constitute one general fund for the entire line of turnpike road,

but is specifically to be applied for the repair of that part of the road in the particular township. I think, that the magistrates ought, in the exercise of their discretion, on the face of the authority itself, to have shown, that in their opinion, in each particular township, a composition in lieu of statute duty was advisable. Here, upon the face of this authority, they do not appear distinctly to have exercised any such discretion, because they have only stated that the maintenance and repair of *the said roads* can be more effectually carried on by a composition in money than by a performance of the statute duty in kind. I therefore think, that there was a defect in the authority itself, which Mr. *Fielden* had an opportunity of observing. I also strongly incline to think, though, upon that point, I do not mean to intimate any decided opinion, that it should be made to appear *upon oath* to both the magistrates present that a composition was advisable. The ground, however, upon which I pronounce my judgment in this case is this, that assuming the magistrates to have said, that there ought to have been a composition in this particular township for the repair of the roads there in lieu of statute duty, (which the warrant assumes them to have said,) I think that it should have been made to appear what the *quantum* of the composition was to be. That is in no respect ascertained as it ought to have been.— It has been insisted, that the communication made to *Johnson* by *Crackenthorpe*, that he required a composition calculated at 6*d.* in the pound, was an intimation that he considered the whole of the composition to be requisite for the repair of the roads in that particular township. From the evidence in this case, I do not believe that *Crackenthorpe* ever exercised any judgment upon that point. He seems to have considered the whole sum collected to be one entire fund for the repair of the whole of the roads, and to have meant to collect in each township, to the utmost extent which by law he could collect. I am of opinion, that the communication by *Crackenthorpe* to *Johnson* of itself was not sufficient, but that it ought to have been notified to the inhabitants of the parish or township, that, in the judgment of the surveyor, it was necessary that there should be a composition in lieu of so many days' team work, in order that the parishioners might have had the opportunity of contesting the claim made upon them. That not having been done, I am of opinion, that there was not any evidence before Mr. *Fielden* to justify him in granting this warrant, because there never has been an assessment duly made and duly notified to the inhabitants of the parish. This rule must therefore be discharged. —*Holroyd* J. I think that there was not sufficient evidence before the magistrates to authorise them to grant a warrant. There was no valid assessment so as to bind any person to the payment of any specific amount of composition, the number of days' statute duty required for repairing the road not having been ascertained or notified to the parish; and. therefore, sufficient was not done to legalise this demand made upon the plaintiff. The magistrates, therefore, had no right to grant the warrant. R. D. (*a*)

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(*a*) Best J. was absent at chambers.

By stat. 34 *G.* 3. *c.* 74. § 4. All which said several sums shall be considered as compositions, and shall be paid to the surveyor at the time the compositions are to be paid under the authority of the aforesaid act, or within ten days after; or in default of such

34 G.3. c.74. Sums to be deemed compositions, and to

34 G.3. c.74.

be recovered by the surveyor.

payments the surveyor shall apply to a justice acting for such district, who shall summon such defaulter to appear at some special or petty sessions to be holden for such district, at which two justices at the least shall be present, to show cause why he refused or neglected to pay; and in default of appearance, or if on appearance he shall not make it appear to the satisfaction of such justices that he is poor and indigent, and as such an object deserving relief, such money shall be levied by distress, in like manner as the forfeitures for neglect of statute duty: Provided, that when on application as aforesaid the justices shall discharge any poor and indigent person from payment of such rate or composition-money, such person shall at the same time be discharged from any expenses in consequence thereof.

Justices may discharge poor persons from such rates.

§ 5. And whereas it may frequently happen that persons wholly gaining their livelihood by the wages of daily labour, and occupying rateable tenements, by reason of age, sickness, a numerous family or misfortune, may be in poor and indigent circumstances, and it may be expedient in certain cases to discharge such persons from all rates, assessments, or composition whatsoever; it is enacted, that on the application of any such person to two justices at any such petty or special sessions, such justices (having first given notice (No. LIII.) to the surveyor to appear on the part of the parish, township, or place,) shall examine into the situation and circumstances of the person making such application; and if it shall appear to the satisfaction of such justices that he is really poor and indigent, and deserving such relief, they may exempt him from all such rates, assessments, or composition.

Justices may direct team duty to be performed in kind.

§ 6. Provided, that if it shall appear to the justices, at their special sessions, to be held in the week next after *Michaelmas* quarter sessions, or at any other special or petty sessions, held within the limits of any parish, township, or place, at which two or more justices shall be present, that from the directions hereinbefore given for the performing and compounding the statute duty, there will be difficulty in procuring the necessary carriage, or a sufficient number of labourers, for the repair of the highways, in any particular parish, township, or place, within their respective limits, without paying high and extravagant prices for the same, it shall and may be lawful for such justices to order (No. XXVII.) and direct the team duty, or so much thereof as they shall think fit, to be performed in kind within every such parish, township, or place, except in respect of such teams as belong to persons who do not occupy lands, tenements, woods, tithes, or hereditaments, of the annual value of 30*l.* within the same; and also to order all such persons as shall gain their living by the wages of daily labour, or such part of them as they shall think fit, to perform six days' labour upon such highways in kind, either by themselves or other sufficient labourers, in case so many days' duty shall be required, upon being paid for such labour the usual and customary wages given to labourers in such parish, township, or place: Provided, that if part of such teams or labourers only are required, it shall be directed by the said order of the justices, in some given proportion, as one half, third, or fourth part thereof; and the surveyor shall, in that case, at a public vestry for such parish, township, or place, put the names of all the persons liable by this act to send such teams, into one hat or box, and the

Exception.

Labourers may be ordered to do statute duty on payment of the usual wages.

Persons to perform duty in kind to be drawn by lot.

names of all the persons liable to perform such labour into another hat or box, and some inhabitant then present shall draw out such number from each as shall be equal to the proportion so ordered by the said justices, and the persons so drawn shall perform such duty in kind for that year; and that if any such order shall be made or continued in the subsequent year, the same method shall be observed, but the names drawn in the preceding year shall not be put into such hat or box; and in every succeeding year such method and regulation shall be observed by such surveyor, as to render the duty so required to be performed in kind as equal amongst the several persons liable thereto as may be; which order of the said justices, so far as the same shall be extended, shall supersede the said power or liberty of compounding, and shall be binding and effectual to all intents and purposes whatsoever, and shall continue in force until it shall be discharged or varied by the justices at some subsequent special sessions for the highways within such limit to be held in the week next after *Michaelmas* quarter sessions; any thing herein contained to the contrary thereof in anywise notwithstanding. 34 G.3. c.74.

By stat. 54 *G.* 3. *c.* 109. § 5. All persons who are liable under any of the provisions of 13 *G.* 3. *c.* 78., 34 *G.* 3. *c.* 74., and 44 *G.* 3. *c.* 52., to contribute to the repair of the highways by a payment of money in lieu of statute duty, shall contribute thereto in lieu of every day's statute duty, for every twenty shillings of the actual annual value at the time of making the said assessment of the lands, tenements, woods, tithes, and hereditaments which such persons shall respectively occupy in the parish, township, or place *where they reside*, or in any other parish, township, or place, a sum equal to one-fiftieth part of the sum fixed by the justices, at the time and in the manner by this act directed, as the composition for one day's labour of a cart, wain, or carriage, furnished with three horses and two able men, omitting any fractional part of the said sum which does not amount to one farthing; and all persons occupying more than 50*l.* *per annum* in the parish, township, or place wherein they reside, or in any other parish, township, or place, and less than 100*l.* *per annum*, shall contribute to the repairs of the highways in lieu of every day's statute duty, for every twenty shillings of the actual annual value at the time of making the said assessment of the lands, tenements, woods, tithes, and hereditaments which such persons shall respectively occupy over and beyond the said sum of fifty pounds *per annum*, and under one hundred pounds, a sum equal to one fiftieth part of the sum fixed by the said justices, at the time and in the manner by this act directed, as the composition for one day's labour of a cart, wain, or carriage, furnished with three horses and two able men, omitting any fractional part of the said sum which does not amount to one farthing; and so on progressively for every twenty shillings of the actual annual value of the lands, tenements, woods, tithes, and hereditaments which they shall respectively occupy over and beyond every additional 50*l.* *per annum*; and the said sum or sums shall be paid in the same manner and within the same period, and subject to the same regulations and provisions, as are now by law established for enforcing the payment of composition in lieu of statute duty. 54 G.3. c.109. Rate of composition for persons occupying under 50*l.*; above 50*l.* and under 100*l.*; and so on progressively.

54 G.3. c.109. Persons keeping carriages, though not occupying to the amount of 50*l.*, liable to composition.

By stat. 54 *G.* 3. *c.* 109. § 6. Every person who shall keep a coach, post-chaise, chair, or other wheel carriage, and not keep a team, draught, or plough, nor occupy 50*l.* *per annum* in the parish, township, or place where he resides, shall pay to the surveyor or surveyors, in respect of every day's statute duty, for every horse which he or she shall use in drawing such carriage, such a sum as the justices shall, at the time and in the manner by this act directed, fix as the composition for one day's work of a horse; or shall, at the option of the surveyor or surveyors, pay in lieu of every day's statute duty, for every 20*s.* of the actual annual value of the lands, tenements, woods, tithes, and hereditaments, which he or she shall respectively occupy, a sum equal to one fiftieth part of the sum fixed by the justices, at the time and in the manner by this act directed, as the composition for one day's labour of a cart, wain, or carriage, furnished with three horses and two able men, omitting any fractional part of the said sum which does not amount to one farthing; and the said sum or sums shall be paid in the same manner, and within the same period, and subject to the same regulations and provisions, as are now by law established for enforcing the payment of compositions in lieu of statute duty.

13 G.3. c.78. Justices may mitigate the composition, where a person maintains his team partly from lands in another parish.

By stat. 13 *G.* 3. *c.* 78. § 40. If any person who shall keep a team, draught, or plough, and shall not occupy lands, tenements, woods, tithes, or hereditaments, to the value of 30*l.* *per annum*, in the parish, township, or place, where he shall reside, but shall in part maintain his horses and beasts of draught used in such team upon or from lands which he shall occupy in one or more adjacent parish or parishes, it shall and may be lawful for the said justices, at some special sessions, to mitigate and reduce the duty or composition so required to be performed or paid by such person or persons, in such manner, and to such sum, as they shall think just and reasonable.

Surveyors to give notice of the time and place for compounding.

§ 41. Provided, that the said surveyor of every parish, township, or place, shall on some *Sunday* in *November* in every year, cause ten days' notice (No. XXVI.) at the least to be given in the church or chapel of such parish, township, or place; and if there be no church or chapel, or no service performed therein, then at the most public place there, and repeat the like notice in such church, chapel, or place, on the next succeeding *Sunday*, of the time and place when and where the persons permitted under the authority of this act, and inclined to compound for the said duty, in manner aforesaid, may signify to such surveyor their intention to compound; and all and every person or persons signifying the same, who shall then, or within the space of one calendar month afterwards, pay to such surveyor the composition authorised and allowed by this act, shall be discharged from the performance of such duty, which composition-money shall be employed by the surveyor for the use of the highways; and that no composition shall be permitted, unless the same shall be paid at the day or within the time aforesaid; but in cases where the occupation of any lands, tenements, woods, tithes, or hereditaments, shall be changed, or any new occupant or inhabitant shall come to reside in such parish, township, or place, after the time appointed for such composition, then the person or persons occupying such lands, tenements, woods, tithes, or hereditaments, or so residing in such parish, township, or place, shall be allowed to compound in

How the composition-money shall be paid and employed.

manner aforesaid: Provided he, she, or they, shall pay the said composition-money to the said surveyor within fourteen days after he, she, or they, shall enter upon such lands, tenements, or hereditaments, or shall come to reside in such parish, township, or place; and every tenant or occupier of any lands, tenements, woods, tithes, or hereditaments, who intends to quit the possession thereof within six calendar months from the time fixed for making such composition, shall and may compound for half the duty hereby required, and the succeeding tenant or occupier shall and may in that case, compound or perform the duty in kind for the other half thereof; and if the surveyor shall receive from any person or persons a composition for more duty than shall be required from the other inhabitants and occupiers within the same parish, township, or place, for the same year, he shall repay such extraordinary composition-money to such person or persons, so as to bring the duty to an equality amongst all such inhabitants and occupiers. 13 G.3. c.78.

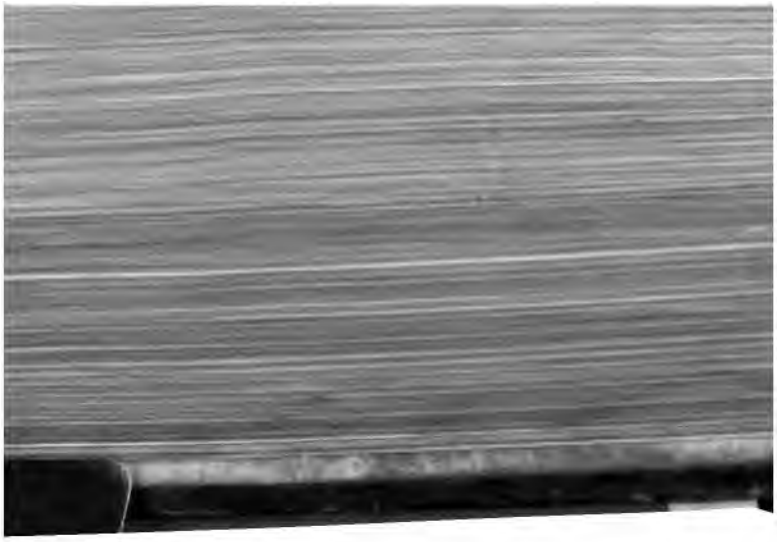
§ 42. Provided, that in every parish, township, or place, where any person shall keep a draught or plough, and no carriage, he shall pay to the surveyor the sum of one shilling for every horse, or pair of oxen or neat cattle, used in such draught or plough, for every day's statute duty on the day such duty is required to be performed, or pay according to the rate aforesaid for the lands, tenements, woods, tithes, and hereditaments, which he shall occupy in such parish, township, or place, at the option of the surveyor. Persons keeping a draught or plough, and no carriage, to pay for the horses or oxen drawing them.

§ 44. And whereas by several acts of parliament concerning turnpike roads, a certain part of the duty called *statute duty* is or may be directed to be performed on such roads, and it may happen in some places, that the several persons liable thereto may have compounded for the same; it is enacted, that in all such cases, the surveyor of the highways of the parish, township, or place, where such composition shall have been made, shall pay to the treasurer or surveyor of such turnpike roads a certain part of the composition-money so received, to be proportioned according to the number of day's duty which such person or persons was or were liable to perform on such turnpike road; which money shall be laid out and expended on such part of the said turnpike road as lies within the parish, township, or place, from which it was received, and not elsewhere; and if such surveyor of the highways shall refuse or neglect to pay to the treasurer or surveyor of such turnpike road such part of the said composition-money so received by him, within twenty days after he shall have received the same, upon demand made by such treasurer or surveyor, the same shall and may be levied upon the goods and chattels of such surveyor, in such manner as penalties and forfeitures are by this act authorised to be levied. Where the surveyor receives composition-money due to the turnpike roads, he shall pay it to the treasurer, to be laid out for the use of the turnpike road within the parish, &c. where it is collected.

VI. Working.

[13 G. 3. c. 78. § 25. 37. 43.—34 G. 3. c. 74. § 2.—54 G. 3. c. 109. § 7, 8, 9.]

By stat. 13 *G.* 3. *c.* 78. § 25. The justices of the peace, at any special sessions to be held by virtue of this act, may, by writing, 13 G.3. c.78. Justices may



By stat. 34 *G.* 3. *c.* 74. § 2. All such persons as aforesaid shall respectively bring with them such shovels, spades, picks, mattocks, and other tools and instruments, as are useful and proper for the purposes aforesaid. 34 G.3. c.74. Tools to be brought.

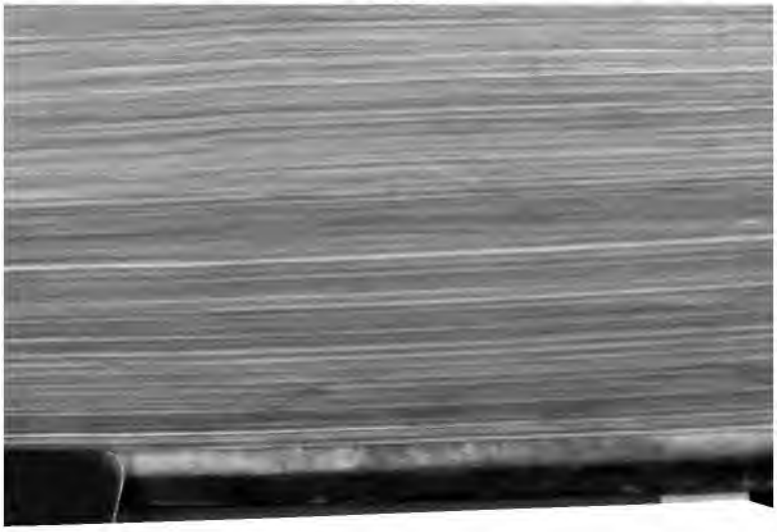
And all the said persons and carriages shall diligently perform the work and labour to which they shall be appointed by the surveyor for eight hours in every of the said days within such parish, township, or place, or in getting and carrying materials in and from any other parish, &c., to be employed in the repair of the highways of the parish, &c., for which they shall be required to perform such duty and labour as aforesaid. *Id.* Manner of working.

If any person sending a team as aforesaid shall not send a sufficient labourer besides the driver (except as before mentioned), or if any such labourer or driver, or the driver of any cart, shall refuse to work and labour according to the direction of the surveyor, or if any driver shall refuse to carry proper and sufficient loads, the surveyor may discharge every such team, cart, or labourer, and recover from the owner of every such team or cart the forfeiture which every such person would have incurred in case no such team, cart, or labourer respectively had been sent. *Id.* Penalty of not working according to the direction of the surveyor.

By stat. 54 *G.* 3. *c.* 109. § 7. All persons who shall refuse or neglect to perform any part of their statute duty in kind, on being regularly summoned by the surveyor for that purpose, shall forfeit and pay a sum equal to twice the amount of the composition for such statute duty as they shall have so neglected or refused to perform, according to the rates fixed by the justices under the provisions of this act; and the said persons shall also be liable to perform the said statute duty which they have so neglected or refused to perform, either in the same or in the following year; the payment of such forfeitures, and the arrears of such statute duty, to be enforced and applied to the benefit of the highway or turnpike road as the case may be, to which the original neglected duty was due or owing, by the surveyor or surveyors for the time being, and under the same regulations and in the same manner as other forfeitures may be levied, and statute duty may in other cases be enforced, by any of the provisions of any of the said herein-before recited acts. 54 G.3. c.109. Enforcing performance of statute duty, and for levying forfeitures and arrears.

§ 8. The justices of the peace and magistrates of all cities, corporations, boroughs, precincts, liberties, and other separate jurisdictions, are hereby authorised and required to put in execution every part of this act within their respective jurisdictions, so far as the provisions thereof are applicable, in as full and ample a manner as the justices of any county or of any division thereof. Justices of cities to execute act.

§ 9. Provided, that nothing in this act contained shall alter the several herein-before recited acts, nor any act or acts passed subsequently to the said herein-before recited acts, regarding the highways or turnpike roads in *England* and *Wales*; but that the same, where not expressly amended or altered by this act, shall remain in as full force as at the time of passing this act; and that all their powers, authorities, provisions, regulations, and forms, shall be applicable, not only to the carrying those acts respectively into execution, but also this act, so far as the same are adapted thereto, and are not expressly varied or altered by this act, in as full and ample a manner as if the same had been re-enacted in this act. Not to alter former acts but where expressly amended.



ıe same shall be wanted, or by licence (No. XXIII.) from two ıstices of the peace, at a special sessions, within any other arish, township, or place, adjoining or lying near to the highway ır which such materials shall be required, if it shall appear to ıch justices that sufficient materials cannot be conveniently had ı the parish, township, or place, where such highways lie, or in ıe waste lands, or common grounds, rivers, or brooks, of such ljacent parish, township, or place, and that a sufficient quantity materials will be left for the use of the parish, township, or place, ere the same shall be, (such lands or grounds not being a garden, rd, avenue to a house, lawn, park, paddock, or enclosed plan- tion,) and to take and carry away so much of the said materials by the discretion of the said surveyor shall be thought neces- y to be employed in the amendment of the said highways; the id surveyor making such satisfaction for the damage to be done such lands or grounds by the getting and carrying away the me as shall be agreed upon between him and the owner, oc- ıpier, or other person interested in such lands or grounds re- ıectively, in the presence, and with the approbation, of two or ıore substantial inhabitants of such parish, township, or place; ıd in case they cannot agree, then such satisfaction and recom- ence shall be settled and ascertained by order of one or more ıstice or justices of the peace of the limit where such land or ound shall lie; and in such places, where, from the want of ıer materials, burnt clay may be substituted in the place thereof, shall and may be lawful for the surveyor to dig clay in such ces as he is hereby authorised to dig chalk or gravel, and to dry same upon the lands adjoining, and to burn the same upon any te lands or common grounds, and to carry such clay in such ner as other materials are allowed to be carried by this act, making such satisfaction for the damages within the several osed lands or grounds where such clay shall be placed or car- as herein directed with regard to other materials: Provided, when the owner of any such enclosed lands shall have occa- for any such materials lying within the same, for the repair y highway, or other roads or ways upon his estate, or which all be under obligation to repair, and shall give notice to such y or that he apprehends there will not be sufficient for those ses, and also for the use of the public highways; then, and ery such case, the surveyor shall not be permitted to dig or such materials without the consent of such owner, or an order o justices of the peace, after having summoned and heard aid owner or occupier, or his steward or agent; which jus- are hereby authorised to enquire into the nature and circum- es of the case, and to permit or restrain such power, in such ner, and under such directions, as to them shall seem just. he sufficiency of the compensation for the materials, or damage in the taking them, or carrying them away, can only be set- and ascertained before the justices according to the direc- s of the act, and cannot be questioned in an action of tres- s: If a plaintiff can show that a new road was made over his ds maliciously or wantonly by the surveyor, and not for the cessary or convenient carriage of the materials over the land, would not be concluded by the amount offered to him, and the

13 G.3. c.78.

or enclosed lands or grounds,

making satisfaction to the owners.

In what manner satisfaction is to be settled.

Clay may be got and burnt into materials for repairing the highways.

Sufficiency of compensation for materials or damage done in taking or carrying them away.

13 G.3. c.78.

surveyor would not, it seems, in such a case be protected by the act. *Boyfield* v. *Porter*, 13 *East*, 200.

§ 32. Provided, that no stone, gravel, or materials to be dug for the use of any other parish, township, or place, than that wherein the same are found, shall be removed or carried from the place where they shall be so dug, at any other time than between the first of *April* and the first of *November*, or in the time of hard frost in the winter season.

§ 33. If any person shall dig or cause to be dug materials for the highways, contrary to the directions of this act, whereby any bridge, mill, building, dam, highway, ford, mines, or tin-works, may be damaged or endangered, he shall forfeit for every such offence any sum not exceeding 5*l*. nor less than 20*s*. at the discretion of the court or justices before whom complaint shall be made.

§ 49. And where a sufficient quantity of stone, gravel, chalk, or other materials cannot be provided and carried by the labourers and teams within any parish, township, or place, the surveyor shall, and is hereby required to contract for the getting and carrying thereof (in presence of the assistant, if any such be appointed,) at a meeting to be held for that purpose; of which ten days' notice in writing shall be given, by fixing the same upon the door of the church or chapel of such parish, &c., or if there be no church or chapel, at the most public place there; which notice shall specify the work to be done, and the time and place for letting thereof; and if the surveyor shall have any part, share, or interest directly or indirectly, in any such contract, or in any other contract or bargain for work or materials to be made, done, or provided, upon, for, or on account of any of the highways, roads, bridges, or other works whatsoever, under his care or management, or shall, upon his own account, directly or indirectly, let to hire any team, or sell or dispose of any timber, stone, or other materials, to be used or employed in making or repairing such roads, bridges, or other works, as aforesaid, (unless a licence, in writing, for the sale of any such materials, or to let to hire any such team, be first obtained from some justice of the peace within that limit,) he shall forfeit for every such offence, the sum of 10*l*., and be for ever after incapable of being employed as a surveyor with a salary under the authority of this act.

If the surveyor has a share in any contract, or shall let to hire any team, or sell or dispose of any timber, stones, &c. without licence from a justice of peace, he shall forfeit 10*l*. and be incapable of being surveyor with a salary.

§ 31. If any surveyor, or person employed by him, shall, by reason of the searching for, digging, or getting any gravel, sand, stones, chalk, clay, or other materials for repairing any highways, make any pit or hole in such lands, rivers, or brooks as aforesaid, wherein such materials shall be found, he shall forthwith cause the same to be sufficiently fenced off, and such fence supported and repaired, during such time as the said pit or hole shall continue open; and within three days after such pit or hole shall be opened or made, where no gravel, stones, or materials, shall be found, cause the same to be forthwith filled up, levelled, and covered with the turf or clod which was dug out of the same; and where any such materials shall be found, within 14 days after having dug up sufficient materials in such pit or hole, cause the same to be filled up, sloped down, or fenced off, and so continued; and every surveyor shall, within 20 days after he shall be appointed to that office, cause all the said pits and holes which shall then be open, and not likely to be further useful, to be filled up or sloped down, in the same

If the surveyor shall make pits or holes in getting materials, he shall cause them to be filled up, or fenced off.

And in like manner all those pits, &c. already made;

ner aforesaid; and if they are likely to be further useful, he shall secure the same by posts and rails, or other fences, to prevent accidents to persons or cattle; and in case such surveyor, person or persons, shall neglect to fill up, slope down, or fence off, such pit or hole, in manner and within the time aforesaid, he or they shall forfeit the sum of 10*s.* for every such default; and in case such surveyor, person or persons, shall neglect to fence off such pit or hole, or to slope down the same, as herein-before directed, for the space of six days after he or they shall have received notice for either of those purposes from any justice of the peace, or from the owner or occupier of such several ground, river, or brook, or any person having right of common within such common or waste lands, as aforesaid, and such neglect and notice shall be proved upon oath before one or more of the said justices of the peace, such surveyor, person or persons, shall forfeit and pay any sum not exceeding 10*l.*, nor less than 40*s.*, for every such neglect; to be determined and adjudged by such justice or justices, and to be laid out and applied in the fencing off, filling up, or sloping down, such pit or hole, and toward the repair of the roads in the parish, township, or place, where the offence shall be committed, in such manner as the said justice or justices shall direct and appoint; which forfeiture, in case the same be not forthwith paid, shall be levied as other forfeitures are hereinafter directed to be levied.

13 G.3. c.78.

or forfeit 10*s.* for every neglect; and for every neglect after notice given.

VIII. Removing Obstructions and Annoyances, Carts, &c. — Drivers misbehaving.

[1 G. 1. st. 2. c. 57. § 8.—24 G. 3. c. 43. § 8, 9.—30 G. 2. c. 22. § 7. 11, 12, 13, 14, 15.—13 G. 3. c. 78. § 6, 7, 8, 9, 10, 11, 12, 13, 14. 59, 60. 62, 63.]

There is no doubt, but that all injuries whatsoever to any highway, as by digging a ditch, or making a hedge overthwart it, or laying logs of timber in it, or by doing any other act which will render it less commodious to the king's people, are public nuisances at common law. 1 *Haw. c.* 76. § 48.

Annoyances in general.

By the common law any one may abate a nuisance to a highway, and remove the materials, but not convert them to his own use. 1 *Haw. c.* 76. § 61.

Also it seemeth that an heir may be indicted for continuing an encroachment or other nuisance to a highway, begun by his ancestor; because such a continuance thereof amounts in the judgment of the law to a new nuisance. *Id.*

To suffer the ditches adjoining to a highway to be foul, by reason whereof it is impaired, is a nuisance also at common law. 1 *Haw. c.* 76. § 50.

And it seemeth clear that it is nuisance at common law to suffer the boughs of trees growing near the highway to hang over the road in such a manner as thereby to incommode the passage. *Ib.* and 3 *Bac. Abr.* 497.

Boughs of trees.

And perhaps it is the better opinion, that he who hath trees next adjoining to the highway, and hanging over it to the annoyance of the people, is bound by the common law to lop the same; and it seems clear that any person may justify the lopping such trees, so far as to avoid the nuisance. 1 *Haw.* c. 76. § 52.



every tree which shall be neglected to be cut down or pruned and lopped; and the surveyor shall cause the same to be done, and the possessor shall pay, over and above the penalties, the charges and expenses (No. XII.) of doing the same; or, in default thereof, such charges and expenses shall be levied, together with the said forfeitures, upon his goods and chattels, by warrant from a justice, (No. XXXVI.) in such manner as is authorised for forfeitures incurred by virtue of this act. 13 G.3. c.78.

§ 13. Provided, that no person shall be compelled, nor any surveyor permitted, to cut or prune any hedge at any other time than between the last day of *September* and the last day of *March;* and that no person shall be obliged to fell any timber trees growing in hedges at any time whatsoever, except where the highways shall be ordered to be enlarged as hereinafter mentioned, or to cut down or grub up any oak trees growing in such highway or in such hedges, except in the months of *April*, *May*, or *June*, or any ash, elm, or other trees, in any other months than *December*, *January*, *February*, or *March*.

Ditches, drains and watercourses.

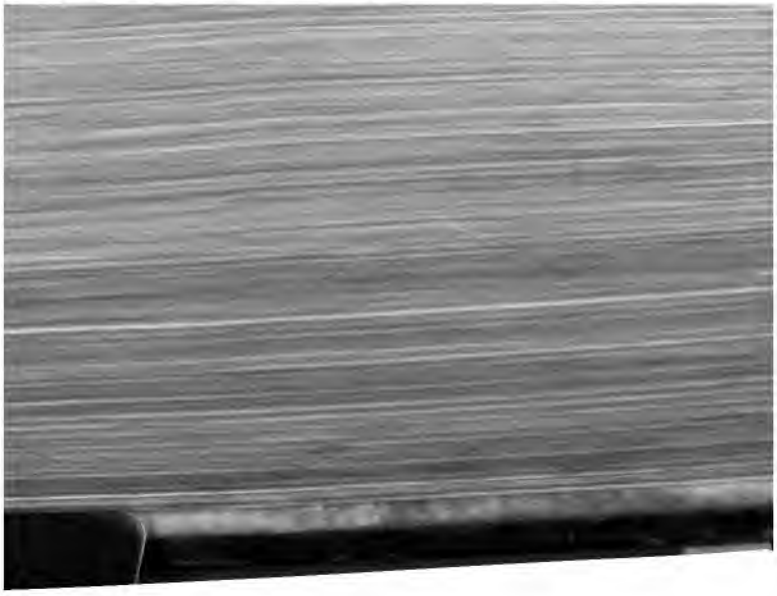
§ 8. Ditches, drains, or watercourses, of a sufficient depth and breadth for keeping all the highways dry, and conveying the water from the same, shall be made, scoured, cleansed, and kept open, and sufficient trunks, tunnels, plats, or bridges shall be made and laid, where any cart-ways, horseways, or footways lead out of the said highways into the lands adjoining thereto, by the occupier of such lands; and every person who shall occupy any lands adjoining to or near the highway, through which the water hath used to pass from the said highway, shall open, cleanse, and scour the ditches, watercourses, or drains for such water to pass without obstruction; and every person making default in any of the matters aforesaid, after ten days' notice given by the surveyor, shall forfeit 10*s*. (No. L.)

Where the old ditches, gutters &c. are insufficient, new ones to be made.

§ 14. Where the ditches, gutters, or watercourses, which have been usually made, or which are herein directed to be made, cleansed, and kept open, shall not be sufficient to carry off the water which shall lie upon and annoy the highways; in such case it shall be lawful for the surveyor, by order of one justice, (No. XIII.) to make new ditches and drains in and through the lands adjoining or lying near to such highways, or in and through any other lands, if it shall be necessary, for the more easy and effectual carrying off such water from the said highways, and also to keep such ditches, gutters, or watercourses, scoured, cleansed, and opened; and the surveyors and their workmen may go upon the said lands for that purpose: Provided, that the said surveyors make proper trunks, tunnels, plats, bridges, or arches, over such ditches, gutters, or watercourses, where the same shall be necessary, for the convenient use and enjoyment of the lands through which the same shall be made, and from time to time keep the same in repair; and do also make satisfaction to the owner or occupier of such lands, which are not waste or common, for the damages which he shall sustain thereby, to be settled and paid in such manner as the damages for getting materials in several or enclosed grounds are directed to be settled and paid.

Persons laying stone, timber, straw, &c. in

§ 9. If any person or persons shall lay, in any highway, any stone, timber, straw, dung, or other matter, or in making, scouring, or cleansing, the ditches or watercourses, shall permit the



forthwith to remove such nuisances, obstructions, or annoyances, and open, cleanse, and scour such ditches, gutters, and watercourses, and make or amend such trunks, tunnels, plats, or bridges, and cut and prune such hedges, for the benefit and improvement of the said highways, to the best of their skill and judgment, and according to the true intent and meaning of this act; and the person or persons so neglecting to make, or open and cleanse such ditches, gutters, or watercourses, or to cut or prune such hedges, during the time aforesaid, after such notice given, shall forfeit, for every foot in length which shall be so neglected, the sum of one penny; and the said surveyors shall be reimbursed what charges and expenses they shall be at in removing such nuisances, obstructions, or annoyances, and making or opening, cleansing and scouring, such ditches, gutters, and watercourses, and in making or amending such trunks, tunnels, plats, or bridges, and in cutting and pruning such hedges respectively, by the person or persons who ought to have done the same, over and above the said forfeiture; and in case such person or persons shall, upon demand, refuse or neglect to pay the said surveyor his charges and expenses occasioned thereby respectively, and also the said forfeiture of one penny *per* foot, then the said surveyor shall apply to any justice of the peace, and, upon making oath before him of notice being given to the defaulter in manner aforesaid, and of the said work being done by such surveyor, and of the expenses attending the same, the said surveyor shall be repaid by such person or persons all such his said charges (No. XII.) as shall be allowed to be reasonable by the said justice; or, in default of payment thereof on demand, the same shall be levied in such manner as the penalties and forfeitures hereby inflicted are directed to be levied. 13 G.3. c.78.

§ 11. If any person shall wilfully set, place, or leave any waggon, cart, or other carriage, or any plough or instrument of husbandry in any highway, (except only with respect to such waggon, cart, or carriage, during such reasonable time as the same shall be loading or unloading, and standing as near the side of such highway as conveniently may be,) so as to interrupt or hinder the free passage of any other carriage, or of H. M.'s subjects; every person so offending shall forfeit 10*s.* for every such offence. Carriages or implements of husbandry left in the highway.

By stat. 1 *G.* 1. *st.* 2. *c.* 57. § 8. If any person, driving any cart, dray, car, or waggon, in the streets of *London*, shall ride upon the same, not having some other person on foot to guide the same, he shall on conviction before the alderman of the ward, or a justice of the peace, on oath of one witness, forfeit 10*s.* by distress and sale; half to the informer, and half to the poor; and in default of payment, to be sent to the house of correction, there to be kept to hard labour for three days. 1 G.1. st.2. c.57. Drivers of carriages misbehaving.

And by stat. 24 *G.* 2. *c.* 43. § 8, 9. If any carter, drayman, carman, waggoner, or other driver, shall ride upon his cart, &c. in *London*, or within ten miles thereof, not having some other person on foot to guide the same, he shall, on the like conviction, forfeit 10*s.* in case such driver shall not be the owner of such carriage; and in case he be the owner, then any sum not exceeding 20*s.*, to be recovered, levied, and applied, as by the aforesaid act of the 1 *G.* 1. *st.* 2. *c.* 57. And any person, though not a peace officer, may stop and apprehend such offender, and carry him as 24 G.2. c.43.



be passing upon such highway, that he cannot have the direction and government of the horses or cattle drawing the same; or shall, by negligence or wilful misbehaviour, prevent, hinder, or interrupt the free passage of any other carriage, or of H. M.'s subjects on the said highways; or if the driver of any empty or unloaded waggon, cart, or other carriage, shall refuse or neglect to turn aside and make way for any coach, chariot, chaise, loaded waggon, cart, or other loaded carriage; or if any person shall drive, or act as the driver of any such coach, post-chaise, or other carriage, let for hire, or waggon, wain, or cart, not having the owner's name (as before, § 59. *infra*, required) painted thereon, or shall refuse to discover the true christian and surname of the owner of such respective carriages; every such driver so offending in any of the cases aforesaid, and being convicted of any such offence, either by his own confession, the view of a justice of peace, or by the oath of one or more credible witness or witnesses before any justice of the peace of the limit where such offence shall be committed, shall, for every such offence, forfeit (No. LV.) any sum not exceeding 10*s.*, in case such driver shall not be the owner of such carriage; and in case the offender be owner of such carriage, then any sum not exceeding 20*s.*; and in either of the said cases, shall, in default of payment, be committed to the house of correction for any time not exceeding one month, unless the same shall be sooner paid; and every such driver, offending in either of the said cases, shall and may, by authority of this act, (No. LIV.) with or without any warrant, be apprehended by any person or persons who shall see such offence committed, and shall be immediately conveyed or delivered to a constable or other peace officer, in order to be conveyed before some justice of the peace, to be dealt with according to law; and if any such driver, in any of the cases aforesaid, shall refuse to discover his name, it shall and may be lawful for the justice of the peace before whom he shall be taken, or to whom any such complaint shall be made, to commit him to the house of correction for any time not exceeding three months, or to proceed against him for the penalty aforesaid, by a description of his person and the offence, and expressing in such proceedings that he refused to discover his name.

19 G.3. c.78.

Empty cart, and not turning aside.

Driver refusing to discover name.

Penalty.

§ 59. And for the better discovery of offenders, the owner of every waggon, wain, or cart, and also of every coach, post-chaise, or other carriage let to hire, shall paint, or cause to be painted, upon some conspicuous part of his waggon, wain, or cart, and upon the pannels of the doors of all such coaches, post-chaises, or other carriages, before the same shall be used upon any public highway, his christian and surname, and place of abode, in large legible letters; and continue the same thereupon so long as such waggon, cart, coach, post-chaise, or other carriage, shall be used upon any such highway; and the owner of every common stage-waggon or cart, employed in travelling stages from town to town, shall, over and above his christian and surname, paint or cause to be painted on the part, and in the manner aforesaid, the following words, "*Common stage-waggon*," or "*Cart*," as the case may be. And every person using any such carriage as aforesaid upon any highway, without the names and descriptions painted thereon respectively as aforesaid, or who shall paint or cause to be

The owner's name and place of abode to be put on carriages.



upon such banks and causeways, or against the sides thereof, and also dig or cast down the said banks, which are the securities and defence of the said causeways, whereby the causeways or banks are often ruined and destroyed; and such evil-disposed persons do or may break, damage, or throw down the stones, bricks, or wood, fixed upon the parapets or battlements of bridges, and do or may pull down, destroy, obliterate, or deface, any milestone or post, graduated or direction post, or stone, erected or to be erected upon any highway: for preventing thereof, it is enacted, that every person who shall be guilty of any such offence shall, upon complaint thereof made to any justice of the peace of the limit where the same shall be proved to be done, by the oath of any one credible witness, or upon view of the justice himself, forfeit for every of the said offences any sum not exceeding *5l.* nor less than *10s.*; and in default of payment thereof, shall be committed to the house of correction of such limit, there to be whipped, and kept to hard labour for any time not exceeding one calendar month, nor less than seven days, at the discretion of such justice. 13 G.3. c.78.

It were much to be wished, that every town or village should be compellable to notify, either on the market-place, church, or other obvious place, in addition to the name of such town or village, its relative distance from the adjacent market-towns, as well as from the metropolis. It were also to be wished that the penalty in the above clause extended to persons *riding* on horseback over foot causeways. *See stat.* 3 *G.* 4. *c.* 126. § 119. *Post*, tit. Highways, (*Turnpike.*)

X. Breadth of Wheels, and Number of Horses.

[6 G. 1. c. 6. — 18 G. 2. c. 33. — 13 G. 3. c. 78. § *55, 56, 57, 58.*]

By stat. 13 *G.* 3. *c.* 78. § *55.* After reciting that whereas the highways, not being turnpike roads, are much prejudiced by the narrowness of the wheels of the several carriages travelling thereon, and by the excessive burdens loaded in such carriages, it is enacted that no waggon, having the sole or bottom of the fellies of the wheels of the breadth of nine inches shall go or be drawn with more than eight horses; and no cart having the sole or bottom of the fellies of the wheels of the breadth of nine inches shall go or be drawn with more than five horses. 13 G.3. c.78. Breadth of wheels and number of horses.

And no waggon, having the sole or bottom of the fellies of the wheels of the breadth of six inches, and rolling on each side a surface of nine inches, shall go or be drawn with more than seven horses.

And no waggon, rolling a surface of six inches only, shall go or be drawn with more than six horses; and no cart, having the sole or bottom of the fellies of the wheels of the breadth of six inches, shall go or be drawn with more than four horses.

And no waggon, having the sole or bottom of the fellies of the wheels of less breadth than six inches shall go or be drawn with more than five horses; and no cart having the sole or bottom of the fellies of less breadth than six inches shall go or be drawn with more than three horses.

On pain that the owner shall forfeit *5l.* and the driver (not being the owner) *10s.*, for every horse or beast which shall be so



ters of malt (*a*), nor more than 700½ of bricks, nor more than one chaldron of coals (*a*), on pain of forfeiting any one of the horses, with the geers, bridles, and halters therewith used, in such manner and to such uses as the penalties directed to be levied and applied by stat. 5 *G.* 1. *c.* 12. (now repealed by stat. 7 *G.* 3. *c.* 42. § 57.) 6 G. 1. c. 6.

And by stat. 18 *G.* 2. *c.* 33. the wheels of every cart, car, or dray, within the bills of mortality, shall be six inches broad in the felly, and not wrought about with iron, nor be drawn with above the number of three horses, after they are up the hills from the water-side; on pain of 40*s.* by warrant of one justice, by distress; and for want of distress, on non-payment, in six days after demand, to be committed till paid; but this not to extend to any country cart or waggon that shall bring any goods, or shall carry any goods half a mile beyond the paved streets of the said cities and places. 18 G. 2. c. 33.

Also any person within the said limits, using any cart, car, or dray, having the wheels full six inches broad, when worn, may have the same bound round with tire of iron, provided it be six inches broad, and made flat, and not set on with rose-headed nails.

XI. Breadth, widening, changing, and diverting Highways.

[8 & 9 W. 3. c. 16. — 13 G. 3. c. 78. § 15, 16, 17, 18, 19, 20, 21, 22. — 55 G. 3. c. 68. § 1, 2, 3, 4, 5.]

By the common law an ancient highway cannot be changed, without the king's licence first obtained upon a writ of *ad quod damnum*, and an inquisition thereon found, that such a change will not be prejudicial to the public: and it is said, that if one change a highway without such authority, he may stop the new way whenever he pleases; and it seemeth that the king's subjects have not such an interest in such new way, as will make good a general justification of their going in it as a common highway, but that in an action of trespass brought by the owner of the land against those who shall go over it, they ought to show specially, by way of excuse, how the old way was obstructed, and the new one set out; also it is said that the inhabitants are not bound to keep watch in such a new way, or to make amends for a robbery therein committed, or to repair it. 1 *Haw. c.* 76. § 3. Highways may be changed by a writ of ad quod damnum.

Note. — The writ of *ad quod damnum* is an original writ, issuing out of and returnable into chancery, directed to the sheriff to enquire by a jury whether such change will be detrimental to the public; which inquisition, being a proceeding only *ex parte*, is in its own nature traversable, and heretofore the party grieved might be heard against it before the chancellor; but now, by stat. 55 *G.* 3. *c.* 68. § 3. *post*, jurisdiction is given to the justices in sessions to hear and determine appeals concerning the same.

Where a new road is made in pursuance of such writ and inquisition thereupon found, after the person who sued out the writ hath once made the said road, the parishioners ought to keep it in Repair of a road made in pursuance of a

(*a*) See note, p. 830.



ground, and for the making such new ditches and fences as shall be necessary, according and in proportion to their several and respective interests therein, and also with any other person or persons, bodies politic or corporate, that may be injured by the enlarging, altering, or diverting such highways respectively, for the satisfaction to be made to him, her, or them respectively, as aforesaid; and if the said surveyor, under the direction, and with the approbation of the said justices, cannot agree with the said person or persons, bodies politic or corporate, or if he, she, or they cannot be found, or shall refuse to treat, or take such recompence or satisfaction as shall be offered to them respectively by such surveyor; then the justices of the peace, at any general quarter sessions to be holden for the limit wherein such ground shall lie, upon certificate in writing, (No. XVII.) signed by the justices making such view as aforesaid, of their proceedings, in the premises, and upon proof of 14 days' notice in writing having been given by the surveyor of such parish, township, or place, to the owner, occupier, or other person or persons, bodies politic, or corporate, interested in such ground, or to his, her, or their guardian, trustee, clerk, or agent, signifying an intention to apply to such quarter sessions, for the purpose of taking such ground, shall impanel a jury of 12 disinterested men, out of the persons returned to serve as jurymen at such quarter sessions; and the said jury shall, upon their oaths, to the best of their judgment, assess the damages to be given, and recompence to be made, to the owners and others interested as aforesaid in the said ground, for their respective interests, as they shall think reasonable, not exceeding 40 years' purchase for the clear yearly value of the ground so laid out, and likewise such recompence as they shall think reasonable, for the making of new ditches and fences on the side or sides of the said highways that shall be so enlarged or diverted, and also satisfaction to any person or persons, bodies politic or corporate, that may be otherwise injured by the enlarging or diverting the said highways respectively.

13 G.S. c.78.

for recompence;

and if they cannot agree,

to be assessed by jury at the quarter sessions.

§ 18. If the jury shall give a verdict for more money than was offered by the surveyor before the application to the sessions, the costs attending the several proceedings shall be paid by the surveyor out of the money in his hands, or to be levied under this act: but if the jury shall give a verdict for no more, or for less than was offered by the surveyor, then the costs shall be paid by the person or body who refused to accept the satisfaction so offered to him as aforesaid.

Costs of proceedings.

§ 16. And upon payment or tender of the money so to be awarded and assessed to the person or persons, bodies politic or corporate, entitled to receive the same, or leaving it in the hands of the clerk of the peace of such limit, in case such person or persons, bodies politic or corporate, cannot be found, or shall refuse to accept the same, for the use of the owner of, or others interested in, the said ground, the interest of the said person or persons, bodies politic or corporate, in the said ground, shall be for ever divested out of them, and the said ground, after such agreement or verdict as aforesaid, shall be esteemed and taken to be a public highway, to all intents and purposes whatsoever; saving nevertheless to the owner or owners of such ground all mines, minerals, and fossils, lying under the same, which can or may be got without breaking

On payment of money assessed, ground to be deemed a public highway.

13 G.3. c.78.

the surface of the said highway; and also all timber and wood growing upon such ground, to be fallen and taken by such owner or owners within one month after such order shall have been made, or in default thereof, to be fallen by the said surveyor or surveyors, within the respective months aforesaid, and laid upon the land adjoining, for the benefit of the said owner or owners; and where there shall not appear sufficient money in the hands of the surveyor or surveyors, for the purposes aforesaid, then the said two justices, in case of agreement, or the said court of quarter sessions, after such verdict as aforesaid, shall order an equal assessment to be made, levied, and collected, upon all and every the occupiers of lands, tenements, woods, tithes, and hereditaments, in the respective parishes, townships, or places, where such highways shall lie, and direct the money to be paid to the person or persons, bodies politic or corporate, so interested, in such manner as the said justices, or court of quarter sessions respectively, shall direct and appoint; and the money thereby raised shall be employed and accounted for, according to the order and direction of the said justices, or court of quarter sessions respectively, for and towards the purchasing the land to enlarge or divert the said highways, and for the making the said ditches and fences, and also satisfaction for the damages sustained thereby; and the said assessment, if not paid within ten days after demand, shall, by order of the said justices, or court of quarter sessions respectively, be levied by the said surveyor, in the manner hereinafter mentioned: Provided, that no such assessment to be made in any one year shall exceed the rate of sixpence in the pound of the yearly value of the lands, tenements, woods, tithes, and hereditaments so assessed. *Vide* stat. 54 *G.* 3. *c.* 109. *post.*

Where there is not money sufficient, assessments may be raised by order of the justices at their quarter-sessions,

not exceeding 6*d.* in the pound.

Old way may be stopped up and the land sold, where a new way is made.

§ 17. When any such new highways shall be made as aforesaid, the old highway shall be stopped up, and the land and soil thereof shall be sold by the surveyor, with the approbation of the said justices (No. XVIII.) to some person whose lands adjoin thereto, if he shall be willing to purchase the same; if not, to some other person, for the full value thereof. But if such old road shall lead to any lands, house, or place, which cannot, in the opinion of such justices respectively, be accommodated with a convenient way and passage from such new highway, in such case, the old highway shall only be sold, subject to the right of way and passage to such lands, house, or place respectively; and the money arising by the sale shall be applied towards the purchase of the land where such new highway shall be made; and on payment or tender of the money, and on a certificate (No. XIX.) signed by the said two justices, or by the chairman of the said court of quarter sessions respectively, describing the lands so sold, and expressing the sum so agreed for, and directing to whom the same shall be paid, and on the purchaser's taking a receipt (No. XX.) for such purchase-money from the person entitled to receive the same by an indorsement on the back of such certificate, the soil of such old highway shall become vested in such purchaser and his heirs. But all mines, minerals, and fossils, lying under the same, shall continue to be the property of the person who would have been entitled to the same, if such old highway had continued there.

Power of justices to order

It has been decided, that the power thus given to two justices to order any highway to be widened extends to roads repairable

ratione tenuræ; and that upon disobedience to such order the party may either be proceeded against summarily under the statute, or by an indictment for an offence at common law. *R.* v. *Balme*, 2 *Cowp.* 648. 1 *Haw. c.* 76. § 57. 1 *Russ.* 454.

highways to be widened, extends to roads repairable ratione tenuræ.

The 19th sect. of 13 *G.* 3. *c.* 78. enacted, that highways, bridleways, and footways, might be diverted by the justices at their special sessions, with the consent of the owner of the lands, so as to make them nearer and more commodious to the public; and provided for an appeal to the quarter sessions by the persons injured by any such proceedings, or by the enclosure of any road by an inquisition upon a writ of *ad quod damnum:* but this part of the section is repealed by stat. 55 *G.* 3. *c.* 68. § 1., which recites that it is expedient that more public notice should be given of any order made, or proceeding had, for diverting, turning, stopping, and enclosing any highway, bridleway, or footway; and also that a greater facility of appeal to the quarter sessions against such order or proceeding should be given to any person or persons who may think themselves aggrieved thereby; and also that the justices of peace should have power, under certain regulations, to stop up unnecessary highways, bridleways, and footways.

13 G.3. c.78. § 19. repealed in part by

55 G.3. c.68.

Justices in certain cases, by order of a special sessions, may divert and turn certain highways, bridleways, and footways.

By § 2. It is enacted, that when it shall appear, upon the view of any two or more of the said justices (No. XXI.) of the peace, that any public highway, or public bridleway or footway, may be diverted, so as to make the same nearer or more commodious to the public, and the owner or owners of the lands and grounds through which such new highway, bridleway, or footway, so proposed to be made, shall consent thereto, by writing (No. XXII.) under his or their hand and seal, or hands and seals, it shall and may be lawful, by order of such justices, at some special sessions, to divert and turn, and to stop up such footway, and to divert, turn, stop up, and enclose, sell, and dispose of, such old highway or bridleway, and to purchase the ground and soil for such new highway, bridleway, or footway, by such ways and means, and subject to such exceptions and conditions, in all respects, as in the said recited act mentioned with regard to highways to be widened or diverted; and also when it shall appear, upon the view of any two or more of the said justices of the peace, that any public highway, bridleway, or footway is unnecessary, it shall and may be lawful, by order of such justices, or any two of them, to stop up, and to sell and dispose of such unnecessary highway, bridleway, or footway, by such ways and means, and subject to such exceptions and conditions in all respects, as in the said recited act is mentioned, in regard to highways to be widened and diverted; except that the money to arise from such sale, where, by the said act, it would be applicable to the purchase of the ground and soil of the new highways or bridleways therein mentioned, shall be paid to the surveyor or surveyors, and be applied towards the general repairs of the highways and bridleways of the parish, township, or place, within which the said highway, bridleway, or footway, so stopped up, shall be situate: Provided, that in the several cases before mentioned, a notice, in the form or to the effect of schedule (A) (*a*) to

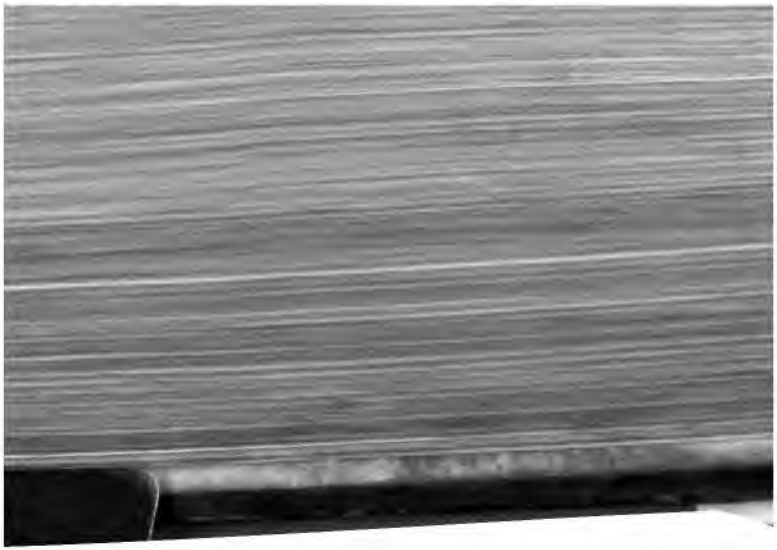
Justices may order the stopping up of unnecessary highways, &c.

Notice must be affixed at the

(*a*) Schedule referred to: —

SCHEDULE (A).—Form of Notice.

Notice is hereby given, that on the ——— *day of* ——— *last, an order was signed by* J. W. *and* T. H., *two of his majesty's justices of the peace in and for the*



quarter sessions is hereby authorised and empowered to hear and finally determine such appeal. *55 G.3. c.68.*

§ 4. Enacts, that if no such appeal be made, or being made, such order and proceedings shall be confirmed by the said court, the said enclosures may be made, and the said ways stopped; and the proceedings thereupon shall be binding and conclusive to all persons whomsoever; and the new highways, bridleways, and footways, so to be appropriated and set out, shall be and for ever after continue a public highway, bridleway, or footway, to all intents and purposes whatsoever; but no enclosures of such old highways, bridleways, or footways (except in the case of stopping up of such useless highways, bridleways, or footways, as herein-before is mentioned,) shall be made, until such new highway, bridleway, or footway, shall be completed and put into good condition and repair, and so certified by two justices of the peace upon view thereof; which certificate shall be returned to the clerk of the peace, and by him enrolled amongst the records of the court of quarter sessions, next after such order as aforesaid shall have been confirmed or enrolled pursuant to the directions herein-before contained; but from and after the enrolment (*a*) of such order and certificate, such old highway, bridleway, or footway, shall be stopped up, and the soil of such old highway or bridleway sold in the manner, and subject to the reservations and restrictions, in the said recited act mentioned, with respect to highways to be diverted by virtue of the said recited act.

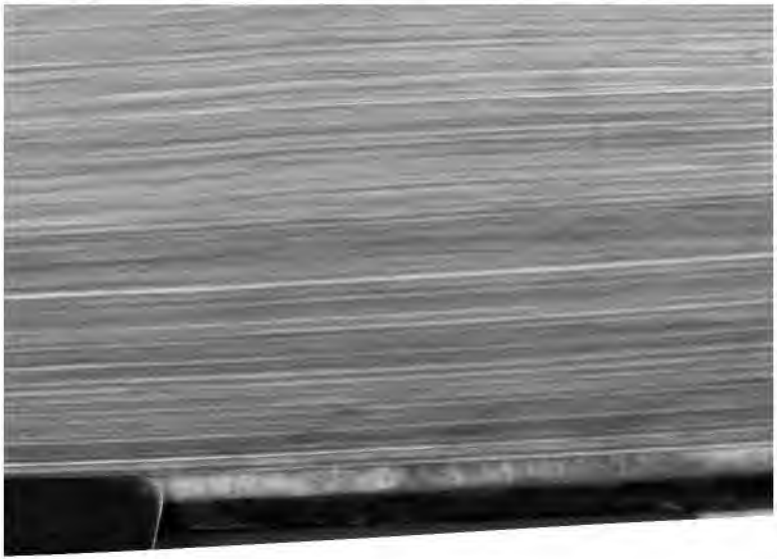
If no appeal be made, or if such order be confirmed, the old ways may be stopped, and proceedings shall be conclusive; and new highways shall afterwards continue public highways, &c.

§ 5. Provides that this act shall not annul or affect any order or proceeding made or had previous to the passing of the act.

Rex v. *Kirk, M.* 3 *G.* 4. 1 *B. & C.* 21. An order of two justices for the county of *Denbigh*, made at a special sessions held on the 7th of *June*, 1821, recited that they had found, upon view, that a certain part of a highway therein particularly described, by reference to a plan annexed to the order, might be diverted and turned, so as to make the same nearer and more commodious to the public; and that they had viewed a course in lieu thereof, therein also particularly described, by reference to the same plan, part of which new road was to pass through the lands and grounds of the late *Thomas Jones*, Esq. The order then stated that they had received evidence of the consent of the said *T. Jones*, Esq., in his lifetime, to the said part of the new road being made and continued through his lands, by writing under his hand and seal; and directed the road to be diverted and turned accordingly. The sessions, on appeal, having confirmed this order, it was removed into the court of K. B. by *certiorari*, and a R. N. having been obtained for quashing it, and the order of sessions confirming it; after cause shown, *Abbott* C. J. said,—"I am of opinion that this order must be quashed. It seems to me that the proper construction of the statute will be to hold that there must

An order of justices for diverting a highway stated that the new road was to pass through the lands of the late *T. J.*, and that the justices had received evidence of the consent of the said *T. J.* in his lifetime: Held, that this order was bad, because it did not thereby appear that *T. J.* was the owner of the estate at the time when the order was made.

(*a*) In the 19th sect. of stat. 13 *G.*3. *c.*78. the words were "*from and after such certificate;*" but in other respects the clauses are nearly similar. Upon the 19th sect. of 13 *G.*3. *c.*78. it was held by the court of C. P. that if the orders and certificates of magistrates were delivered to the clerk of the peace to be enrolled, the statute was satisfied, although the clerk of the peace made no transcript thereof, the statute being only directory to the officer as to this enrolment; and it is doubted whether that statute intended that a transcript should be made. *De Ponthieu* v. *Pennyfeather*, 5 *Taunt.* 634.



the enrolment is to be made. In this instance, the confirmation and enrolment were made at a quarter sessions held before the requisite time had elapsed. Parties grieved were not bound to appeal then; and, if we were to hold the confirmation and enrolment good, they would be deprived of an opportunity of appealing at the subsequent sessions. That order must, therefore, be quashed. — *Bayley* J. I am of opinion that the order of sessions must be quashed, and the original order also. It should have appeared on the face of that order, that a sufficient assent was given under the hand and seal of *Stace*. The public have a right, if a path is diverted, to see the order, with all requisites, enrolled amongst the records of the sessions, as evidence of their right to the new path. — *Holroyd* J. I am of the same opinion upon both points; the consent upon which the original order was made was informal and insufficient. Notwithstanding any thing stated upon that, *Stace* might insist that he had not given a legal and valid assent. — *Abbott* C. J. As the rest of the Court think both orders bad, both must be quashed; and indeed I think that the original order would have fallen to the ground, even had the assent been properly given. R. A. See *R.* v. *Kirk*, *ante*, p. 837.

Rex v. The Justices of Kent.

Rex v. *Kenyon*, 6 *B.* & *C.* 640. The order of the justices for stopping up an unnecessary footway must distinctly state, on the face of it, in what parish, &c. the footway is situate; and must also describe its length and breadth. It seems that the order must further be for the sale, as well as for the stopping up of such footway.

The order must state in what parish the footway is situate; and its length and breadth, &c.

At some special sessions.] This means a sitting convened by reasonable notice to the several justices acting and residing within the division; and unless such notice be given, the court of quarter sessions ought not to confirm and enrol the order, even though there be no appeal against it. *R.* v. *the Justices of Worcestershire*, 2 *B.* & *A.* 228. See Vol. V. tit. Sessions.

Rex v. *Sheppard*, *H.* 60 *G.* 3. and 1 *G.* 4. 3 *B.* & *A.* 414. Two justices for the west riding of *Yorkshire* made the following order, dated 21st *September* 1818. "We whose names are hereunto subscribed, being two of H. M.'s justices of the peace acting in and for the said riding, having, upon view, this day found that two certain public footways, leading, &c. are unnecessary, do hereby order the same to be stopped up and discontinued from the public use." The sessions, on appeal, having confirmed the order, *Russell* in last *Trinity* term obtained a *certiorari* to remove both orders, for the purpose of quashing them, on the ground that the first order was insufficient, it not being therein stated that it was made at a special sessions, and he cited *Rex* v. *The Justices of Worcestershire*, 2 *B.* & *A.* 228. On showing cause, it was said, that if the 13 *G.* 3. *c.* 78. is to be incorporated with the 55 *G.* 3. *c.* 68. the *certiorari* is taken away. — *Abbott* C. J. There is no clause in the 55 *G.* 3. *c.* 68. which takes it away, and, unless that be so, it lies by the common law. Then the only question remaining is, whether this order is, on the face of it, bad, it not being stated to have been made at a special sessions? I think that it is bad on that ground. It seems to me, that an order like this must, under the 55 *G.* 3. *c.* 68. § 2. be made at a special sessions. It is admitted, that an order for diverting a road must be so made, and no reason can be assigned for such a

An order for stopping up an unnecessary highway, under 55 G. 3. c. 68. § 2. must be made at a special sessions, and that fact must be made appear on the face of the order.



cial sessions" must, from the manifest intent of the legislature, over-ride the whole clause. I therefore fully concur in the opinion that both these orders ought to be quashed. — Both orders quashed. Rex v. Sheppard.

Where the court of quarter sessions confirmed an order of two justices, for stopping up a highway, without proof that the order was previously made at a special sessions, and an application being made to the court of K. B. for a *mandamus* to enter continuances; the court would not interfere where the sessions had already decided upon a point peculiarly within their jurisdiction.

The King against the Justices of ———, 1 *Chit. Rep.* 164. *Campbell* moved for a *mandamus* commanding the defendants to enter continuances on an appeal against an order made by two justices for stopping up a highway. The appeal came on to be heard at the last quarter sessions, and the order was confirmed. It appeared, however, that there was some irregularity in this proceeding, inasmuch as the order could not be confirmed, unless upon proof that the order for stopping up the highway was made at a special sessions. This was necessary according to the authority of a case decided in last *Michaelmas* term, where there was no such evidence; but on the contrary, it appeared that the order for shutting up the highway was not made at a special sessions. *Per curiam.*—The sessions appear to have decided that point, and we cannot interfere where the court of quarter sessions have decided a point peculiarly under their cognisance. — R. R.

Divert and turn.] Under stat. 13 *G.* 3. *c.* 78. § 19. a new highway must have been set out before an old one could be stopped. The magistrates could only order the old highway to be stopped up, on the condition that a new highway had been made and put in a proper state. It was held not to be sufficient that another old highway was widened in different parts, so as to answer the purpose of a new road, the *termini a quo* and *ad quem* and the direction of it remaining the same as before. Increasing the width of one old highway, is neither *diverting* another old highway, nor making a *new* one. *Welsh* v. *Nash*, 8 *East*, 394.

If a new highway be not set out before the old one be stopped up, the legality of the order of the justices for diverting the old road and stopping it up, may be questioned in an action of trespass, notwithstanding such orders were confirmed by the sessions on appeal, stating the fact of a new road being set out in lieu of the old one. S. C.

Appeal to the next sessions on giving ten days' notice.] On this part of the statute a question has arisen, whether the appeal must be made to the sessions next after the order for stopping up the old way, or after the party has notice of such order. But it is now decided, that by the necessary construction of the statute, the appeal must be made to the quarter sessions *next after the order made*, without reference to any *notice* received by the appellant of such order. *R.* v. *the Justices of Staffordshire*, 3 *East*, 151. — *See* 7 *T. R.* 81. and *R.* v. *the Justices of Pembrokeshire*, 2 *East*, 213. Rex v. Justices of Staffordshire.

R. v. *the Justices of Herefordshire*, *H.* 55 *G.* 3. 3 *M. & S.* 459. Two justices, at a special sessions *on the 20th of June*, made an order, by which they ordered a public footway to be diverted and turned; and upon the 4*th of July* following made another order by which If two justices make an order for diverting and turning a

Rex v. Justices of Herefordshire.

public footway, and afterwards an order for stopping up the old footway, the party grieved may appeal to the quarter sessions against the last order, though he be too late to appeal against the first.

they ordered the old footway to be stopped up. Appeal against these orders was made at the next *Michaelmas* quarter sessions and not at the *Midsummer* quarter sessions, which were holden on the 11*th of July*, on which account the justices dismissed the appeal. A *mandamus* was moved for to enter continuances to the next quarter sessions, &c. The question was, whether the time for appealing was to be reckoned from the date of the first or second order? In support of the rule for a *mandamus*, it was contended that the order for diverting and turning does not of necessity comprehend a shutting out of the public from the old way; but they had still a right to go along till the second order was made for shutting it up; and § 19. of 13 *G.* 3. *c.* 78. gives the appeal *expressly* where any footway shall be *ordered to be stopped up*, so that the appeal against the second order was at all events in good time. And of this opinion was the Court: for Lord *Ellenborough* C. J. said, "the *gravamen* as to the public is the *stopping up*; but the appeal must be confined to the latter order."

13 G.3. c.78. Highways having been turned above twelve months from necessity without an order.

By stat. 13 *G.* 3. *c.* 78. § 19. (which is unrepealed by stat. 55 *G.* 3. *c.* 68.) where any highway, bridleway, or footway, *hath been* diverted and turned above twelve months, either from necessity, where the same hath been destroyed by floods, or slips of the ground, or from other causes and motives, if a new way hath been made in lieu thereof nearer or more commodious to the public, and the same hath been acquiesced in, and no suit or prosecution hath been commenced for the diverting or turning the same, such new way shall from henceforth be the public way to all intents and purposes whatsoever: and all persons liable to the repair of any such old highways, bridleway, or footway, shall continue liable to the repair of such new way, except where any agreement shall have been made relative to such repair between the parties interested, which hath laid the burthen thereof, or of any part thereof, upon any other person, in which case the same shall be observed.

Hath been diverted and turned above twelve months.] It has been decided that this clause is only retrospective in its operation. *Waite* v. *Smith*, 8 *T. R.* 133. Lord *Kenyon* C. J. in giving his judgment said,—"If any jobs had been done before the act passed, that act has certainly cured them: but the legislature did not mean to give a sanction to any jobs in future."

Unnecessary roads may be stopped up;

And by stat. 13 *G.* 3. *c.* 78. § 22. If in any parish or place where a highway shall be diverted and turned by virtue of this act, it shall appear to the justices that there are *other* highways within such parish or place, besides that so to be diverted and turned, which may without inconvenience to the public be diverted into such new highway, or into any other within the same parish or place, and the charge of repairing the same may be thereby saved, the said justices may order such highway, which shall appear to them unnecessary, to be stopped up, and the soil thereof sold, in such manner, and subject to such restrictions, and such right of appeal, as herein-before directed concerning highways to be stopped up or enclosed.

but in cases only where a new road is set out.

The power to shut up roads is given only where there is a new road to be set out. It must be one entire act; the clauses 19. and 22. make one provision, and the powers under them are to make but one transaction. *Page* v. *Howard*, *Cald.* 228. *Vide* stat. 55 *G.* 3. *c.* 68. § 2. *ante*, p. 835.

Stat. 13 *G.* 3. *c.* 78. § 20. Provides that no common land, lying between the fences of any old highway to be stopped up or enclosed by virtue of this act, shall be enclosed; and where the land lying between the fences of such highway, not being common land, shall, upon a medium, exceed 30 feet in breadth, and not extend to 50 feet in breadth, the same shall not be stopped up or enclosed, until satisfaction shall be made to the owner of such land, for so much thereof as shall exceed the said breadth of 30 feet; and if the parties cannot agree in the satisfaction so to be made, the same shall be adjusted by the said justices, or the jury, if a jury shall be impanelled; and if the land between the fences enclosing such highways, not being common land, shall exceed 50 feet in breadth upon a medium, or if the said old road, so to be diverted or turned, shall lie through the open field or ground belonging to any particular person or persons, such person or persons, and also the person or persons entitled to the land between the fences on the side of such highway, shall respectively hold and enjoy the land and soil of such old highway, and pay to the surveyor, for the use of the highways, so much money as shall be agreed upon between the parties; or if they cannot agree, so much as shall be deemed and adjudged by the said justices, or jury, if such jury shall be impanelled as aforesaid, to be adequate to the purchase of it, estimating, such highway at 30 feet in breadth, upon an average.

13 G.3. c.78. In what cases, and in what manner, and upon what terms, the old highways, or the lands lying between the fences enclosing the same, shall be disposed of.

§ 21. Where any footway shall be diverted by virtue of this act through the land belonging to the same person who owned the land through which such old footway lay, the same shall be adjudged and deemed an exchange only, and no satisfaction or compensation shall be made, unless the land to be used for such new footway shall be of greater length, and of greater value, than the land used for such old footway; and where the said footway shall not be turned through the lands belonging to the same person, the damage occasioned by such old footway to the lands through which it lay, if the parties interested shall not agree in adjusting the same, shall be adjudged by two indifferent persons, the one to be named by the owner of the land, and the other by the said two justices; and if the persons so to be nominated cannot agree therein, they shall choose some third person to adjudge the same, whose determination shall be final; and the money at which such damages shall be assessed shall be applied in making satisfaction to the owner or owners of the land through which such new footway shall be made.

When old footways are stopped up, and new ones laid out, in what manner the owners of the lands shall make and receive satisfaction.

For the repairs of a way turned or diverted, see Highways, Turnpike, § VIII.

Repairs.

XII. Assessments how to be made.

[13 G. 3. c. 78. § 30. 45, 46.—54 G. 3. c. 109. § 1, 2. 3.]

By stat. 13 *G.* 3. *c.* 78. § 30. after reciting that whereas in some parishes, townships, or places, there may not be sufficient materials for the repair of the highways within the same, nor within the waste lands, common grounds, rivers, or brooks, of any other parish, township, or place, lying within a convenient distance from such highway, by reason whereof the surveyor of such highway may be forced to buy such materials, and to make recom-

13 G.3. c.78. Expenses incurred for buying materials, making satisfaction for damages, &c.



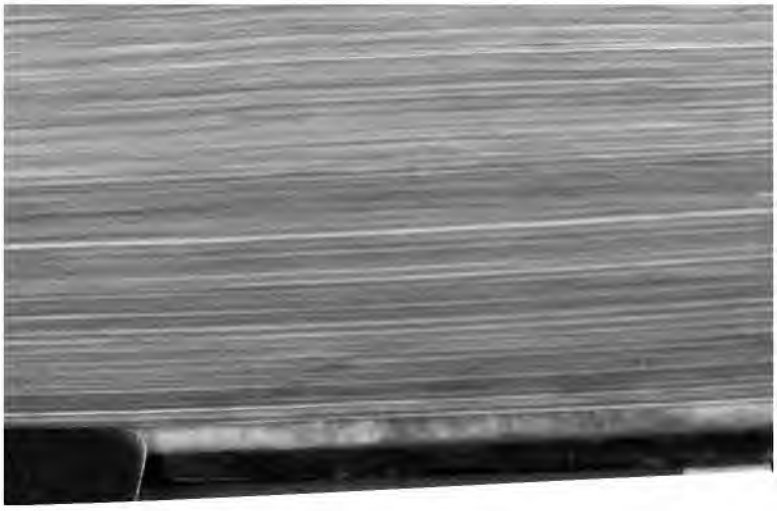
special sessions, shall direct and appoint in that behalf; and the money thereby raised shall be employed and accounted for, according to the orders and directions of the said justices, for and towards the amending, repairing, paving, cleansing, and supporting such highways, causeways, streets, pavements, and bridges, from time to time, as need shall require. 13 G.3. c.78.

§ 46. Provided, that the assessment herein-last before authorised, and the assessment herein-before authorised, for buying materials, making satisfaction for damages, erecting guide-posts, and paying the surveyor's salary, shall not together, in any one year, exceed the rate of nine-pence in the pound of the yearly value of the lands, tenements, woods, tithes, and hereditaments so to be assessed. but such assessment, with the other, for buying materials, &c. not to exceed 9*d.* in the pound in any one year.

An assessment of 6*d.* in the pound may also be made in the extraordinary case pointed out by section 16. *ante*, p. 833, 834.

And by stat. 54 *G.* 3. *c.* 109. § 1. after reciting that whereas by 13 *G.*3. *c.*78. § 45. the justices of the peace at their general quarter or special sessions for the highways are empowered to allow certain assessments to be made and collected for the maintenance and repair of the highways: And whereas it has been found by experience, that the assessments which are authorised by that act, are not sufficient for the purposes to which the same are therein directed to be applied; it is enacted, that if upon the application of the surveyor of the highways of any parish, township, or place, to the justices of the peace at their general or quarter sessions, or at a special sessions for the highways, the said justices shall be fully satisfied that the common highways, bridges, causeways, streets, or pavements, belonging to such parish, township, or place, are so far out of order that they cannot be sufficiently amended and supported by the means in the said herein-before recited act of the 13 *G.* 3. prescribed, and by the assessments therein authorised to be made and collected, it shall and may be lawful for the said justices to authorise, order, and direct an additional assessment to be made on such parish, township, or place (over and above all the assessments by the said act authorised to be made and collected); which said additional assessment shall be levied and collected by the same means, and in the same manner and form as is directed for the levying and collecting the assessments made under the authority of the said herein-before recited act, and upon the same persons as are therein declared to be liable to be rated to the said assessments. 54 G.3. c.109. Upon application of surveyor of the highways, justices may direct an additional assessment.

§ 2. Provided, that notice (No. XIV.) of such intended application shall be first proved before the said justices, upon the oath of the surveyor making such application, to have been given at the church or chapel, on two *Sundays* preceding such general or quarter sessions, or special sessions for the highways; or, in townships or places where there are no churches or chapels, to have been stuck up in writing in two or more conspicuous places within the said townships or places, for one week at least previous to such general or quarter sessions, or special sessions for the highways; or, in extra-parochial places, to have been given in writing to some of the principal inhabitants residing in such extra-parochial place, a week at least before such general or quarter sessions, or special sessions for the highways, in order that any person or persons liable to be rated to the assessment intended to be ap- Notice of such application to be given.



said assistant, in respect of such parish, township, or place, by virtue and for the purposes of this act, and to whom, and on what occasion, he hath paid or applied the same; 18 G.3. c.78. received and paid;

(3) And shall also enter in such book a list of all such sums of money as shall then remain due and owing from any person or persons in respect of the payments, compositions, assessments, penalties, or forfeitures; and of monies due;

(4) And also an account of all tools, materials, implements, and other things provided, or to be provided, by order of the inhabitants, at a vestry or other public meeting, for the repair of the highways, at the public expense of such parish, township, or place; and of implements;

(5) And shall produce the book and the assessments made within that year, for the purposes of this act, unto the inhabitants at a vestry, or other meeting to be held for that purpose, within 15 days before the special sessions to be holden *in the week next after Michaelmas quarter sessions*; (*Vide* stat. 55 *G.* 3. *c.* 68. § 6. *ante*, § II. p. 786.) to the intent that the said accounts, assessments, and lists may be inspected by the said inhabitants. and produce the book at a public meeting;

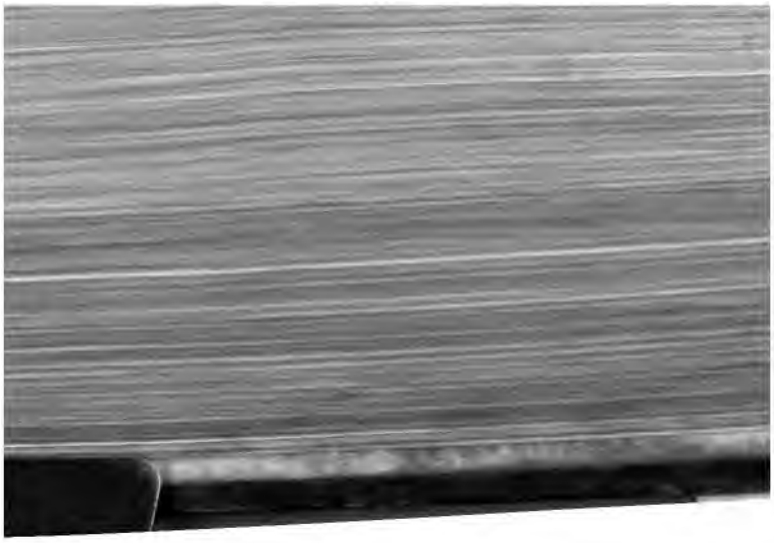
(6) And after the said books and assessments shall have been produced at such meeting, he shall take the same to such justice, for the limit wherein such parish, township, or place doth lie, and on such day, and at such hour as shall be agreed upon at such meeting, some day after the said meeting, and before such *last-mentioned special sessions*; (*Vide* 55 *G.* 3. *c.* 68. § 6. *ante*, § II. p. 786.) and then and there verify such account, or any part thereof, upon oath, (No. IX.) if required. and verify his accounts upon oath before a justice;

(7) And such justice may allow such account (No. X.), if he finds it just, or postpone it until such special sessions, if he finds cause for so doing, in which case it may be settled and allowed at such special sessions, after the parts objected to by such justice shall have been explained and verified by proper evidence, to the satisfaction of the justices at such special sessions; and in case any articles contained in such accounts shall not be explained and proved to the satisfaction of such justices, they may disallow the same. which may be allowed by the justice or postponed to the special sessions.

In *Rex* v. *Justices of Somersetshire*, 5 *B.* & *C.* 816. it was held, that the justices at petty sessions have no original jurisdiction over the accounts, and an order having been made by them for the allowance of a surveyor's accounts, which had not been previously laid before one justice, the court granted a *certiorari* to remove it, and quashed the order. And on the strength of this case, it was held, in *Rex* v. *Justices of the N. R. of Yorkshire*, 6 *B.* & *C.* 152., that an allowance by petty sessions, without such prior investigation, is invalid.

(8) For the account examined and taken, and oath administered, the justices' clerks shall have the sum of 1*s.* and no more; and if any person or persons shall receive any greater fee, he shall forfeit 10*l.* for every offence. Clerks' fee.

(9) When the said accounts shall be so settled and allowed, or disallowed as aforesaid, all such books and assessments shall be transmitted to the churchwarden or overseer of the poor of such parish, township, or place, or, if the place be extra-parochial, then to some principal inhabitant thereof, to be kept for the use of such parish, township, or place; and the said surveyor shall forth- Books then to be delivered to a churchwarden or overseer, or principal inhabitant, and a duplicate



be situate in one county and the rest in another, and a highway lying in one part be out of repair, an indictment against the inhabitants of *that part only* is bad; and that the indictment should have been against the whole parish. *R.* v. *The inhab. of Clifton*, 5 *T. R.* 498.

And it appears to have been always considered that the indictment under such circumstances must be preferred in that county wherein the ruinous part of the road lies. *R.* v. *Inh. of Clifton*, 5 *T. R.* 498. *R.* v. *Weston*, 4 *Burr.* 2507.

In every indictment against a parish for not repairing a highway, there are three essential averments: the first, that the road is a highway; the second, that it is out of repair; and the third, that it is situated in the parish. 2 *Stark. C. P.* 693, note (*m*). 1 *Russ.* 478. S. P.

If the highway be not alleged in a presentment or indictment to lie in the parish indicted, the parish is not bound to repair it, and such presentment or indictment is erroneous. *R.* v. *Hartford*, 1 *Cowp.* 111.

Must show it to be a highway.

The indictment must show that the way is common to all the king's people; for which cause it hath been resolved that an indictment for a nuisance to a horseway, without adding that it is a highway, is naught. 1 *Haw. c.* 76. § 89.

The length and breadth of this way, and from whence and whither, are necessary to be ascertained in these indictments; but I do not remember any authority that holds it necessary to say it is a highway, for this or that particular carriage; for if it be a common highway, it is a highway for all manner of things. *Per* Ld. *Hardwicke* C. J., *R.* v. *Hatfield*. *Cas. temp. Hardw.* 315.

Need not be shown when it became a highway.

In *Aspinall* v. *Brown*, 3 *T. R.* 265., the court of K. B. held that, in indictments for nuisances to highways, it is not necessary to state the highway to have been such "*from time whereof the memory of man is not to the contrary*," or "from time immemorial." It is sufficient to state, in a compendious manner, *that it is a highway*. See also 2 *Saund.* 158 *b.* (*n.*) 4.

Not necessary to show the places from and to which it leads.

It is more safe in the indictment to show both the place *from* which, and also the place *to* which the way supposed to be out of repair doth lead; yet exceptions for want of such certainty have sometimes been disallowed. However, it seems certain, that there is no necessity to show that a highway leads to a market-town, because every highway leads from town to town. 1 *Haw. c.* 76. § 86.

And it has been expressly decided, that in pleading a public highway, it is not necessary to state the places *from* and *to* which the way led, though it is otherwise in the case of a private way; nevertheless, if a defendant will state the *termini* in his justification, he is bound to prove them. *Rouse* v. *Bardin and others*, 1 *H. Blac.* 351. 2 *Stark. C. P.* 693. n. (*l*).

Place where.

It is necessary in the indictment expressly to show in what place the nuisance complained of was done: for which cause an indictment for stopping a way at *D.* leading from *D.* to *C.* is not good; for it is impossible that a way leading from *D.* should be in *D.*, and no other place is alleged. 1 *Haw. c.* 76. § 87.

R. v. *Inh. of Gamlingay*, 3 *T. R.* 513. 1 *Leach*, 528. This was an indictment against the parish of *Gamlingay*, for not repairing a highway leading *from* the parish of *Hatley, St. George*, towards and



will never know the certainty of the charge again
make his defence, nor will the court be able fro
judge of the greatness of the offence, in order
answerable thereunto; and it hath been resolved
not sufficiently ascertained by showing that it co
feet in length and so many in breadth, by *estir*
c. 76. § 88.

Must set forth the fact clearly.

Also the fact alleged must be expressed in su
that it may clearly appear to the court to have
and for this cause it hath been resolved, that a
diverting a highway is not good, because a higl
diverted, but must always continue in the same
was, howsoever it be *obstructed*, and a new way
place. 1 *Haw. c.* 76. § 91.

Persons indicted to have notice.

It seems to be implied in the construction of all
that no one ought to be convicted of any offenc
without having notice of the accusation made agai
opportunity of defending himself: and therefore
that generally no one ought to be punished for an
mentioned offences, without being called upon to
self, and having liberty to traverse the matters
him. 1 *Haw. c.* 76. § 83.

Plea by a parish.

By an individual.

Upon an indictment against a parish for not reps
give nothing in evidence upon the plea of *not guil*
way is in repair; but if it be against a particular
give evidence that others ought to repair it. 1 *M*
Ireton, Comb. 396.

The same point was also ruled in *R.* v. *the In*
of Norwich, 1 *Str.* 177. 110. 183, 184.; where *E*
man would discharge himself on a particular ac
plead it especially; but not where the common rigl
If a man is charged to repair *ratione tenuræ*, he m
the parish by the general issue.

The defendants ought not to plead that they

duty of repairing might be imposed upon others, and the parish be still liable; and that the parish were under the obligation, in the first instance, of seeing that the street was properly paved, and might seek a remedy over against the commissioners. *R.* v. *Inhab. of St. George's, Hanover Square*, 3 *Campb.* 222.

And Mr. *Hawkins* says, that if a particular person be bound to repair a highway, either by inclosure or by prescription, the parish cannot take advantage of it upon the plea of *not guilty*, but ought to set forth their discharge in a special plea. 1 *Haw. c.* 76. § 9.

It is no excuse for the inhabitants of a parish, being indicted at common law for not repairing the highways, that they have done all that is required of them by statute; for since these statutes are wholly in the affirmative, and made in aid of the common law, and to supply the defects thereof, they shall not be construed to abrogate any provision thereby made for these purposes, 1 *Haw. c.* 76. § 18.

Fine.

The defendants shall not be discharged by submitting to a fine, but a *distringas* shall go *in infinitum* till they repair. 1 *Haw. c.* 79. § 94.

13 G.3. c.78. Inhabitants at a meeting may agree to prosecute an indictment.

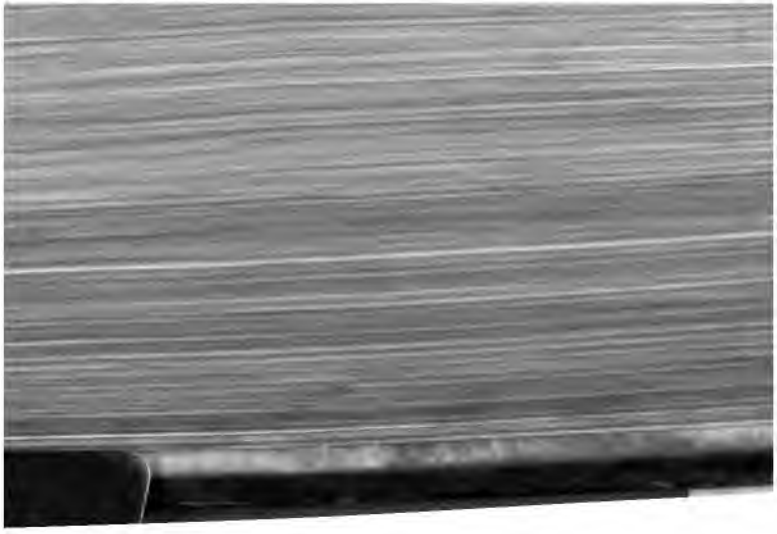
By stat. 13 *G.* 3. *c.* 78. § 65. If the inhabitants of any parish, township, or place, shall agree at a vestry or public meeting, to prosecute any person by indictment (*vide* No. LVIII. and the five following forms) for not repairing any highway within such parish, township, or place, which they apprehend such person was obliged by law to repair, or for committing any nuisance upon any highways, or shall agree at such vestry meeting to defend any indictment or presentment preferred against any such parish, township, or place, it shall and may be lawful for the surveyor of such parish, township, or place, to charge in his account the reasonable expenses incurred in carrying on or defending such respective prosecutions, after the same shall have been agreed to by such inhabitants at a vestry or public meeting, or allowed by a justice of the peace within the limit where such highway shall be; which expenses, when so agreed to, or allowed, shall be paid by such parish, township, or place, out of the fines, forfeitures, compositions, payments, and assessments, authorised to be collected and raised by virtue of this act.

The notice required for holding vestries or public meetings.

And by § 66. In all cases where a vestry or public meeting of the inhabitants of any parish, township, or place, is authorised or directed by this act, there shall be public notice given of the day, hour, and place, of holding the said meeting at the church or chapel of such parish, township, or place, on the *Sunday* next preceding such meeting, and also notice thereof in writing, (No. XXXI.) specifying the purpose of such meeting, fixed at the same time upon the door of such church or chapel, and the same shall not be held till three days at least after such notice given; and if there be no church or chapel, the like notice of such meeting shall be given in writing, and put up at the most public place therein, three days at least before such meeting.

Court may award costs to the prosecutor or defendant upon an indictment or presentment.

§ 64. It shall be lawful for the court before whom any indictment or presentment shall be tried for not repairing highways, to award costs to the prosecutor, to be paid by the person or persons so indicted or presented, if it shall appear to the said court that the defence made to such indictment or presentment was frivolous; or to award costs to the person indicted or pre-



great sessions in *Wales*, shall have authority by this statute upon his or their own view, and every justice of the peace either upon his own view, or upon information on oath given to him by any surveyor of the highways, to make presentment (No. XXXII.) at their respective assizes, or great sessions, or in the open general quarter sessions of such respective limit of any highway, causeway, or bridge not well and sufficiently repaired and amended, or of any other default or offence committed and done contrary to the provision and intent of this statute. *Vide* 2 *Saund.* 157. *et. seq.* 13 G. 3. c. 78. present on their own view.

And all defects in the repair thereof shall be presented in such jurisdiction where the same do lie, and not elsewhere.

And every such presentment shall be as effectual, as if the same had been presented and found by the oaths of twelve men.

Saving to every person affected by such presentment his lawful traverse to the same, as well with respect to the fact of non-repair as to the duty or obligation of repairing the said highways, as they might have had upon any indictment of the same presented and found by a grand jury. May be traversed.

The justices at their general quarter sessions, or the major part of them, may, if they see just cause, direct the prosecutions upon such presentment as shall be made at the quarter sessions to be carried on at the general expense of such limit, and to be paid out of the general rates within the same. Sessions may order the prosecution to be carried on at the expense of the division.

And for every such default so presented, the justices of assize, counties palatine, and great sessions, at their respective courts, and the justices of the peace at their general quarter sessions, shall have authority to assess such fines as to them shall be thought meet.

And no such presentment, nor any *indictment* for any such default or offence, shall be removed by *certiorari*, or otherwise, out of such jurisdiction, till the same be traversed, and judgment thereupon given; except where the duty or obligation of repairing may come in question. Certiorari.

In the case of *R.* v. *Kettleworth*, 5 *T. R.* 33., it was determined that where a justice of peace *indicts* a road for being out of repair (the indictment being afterwards removed by *certiorari*), he is entitled to costs under stat. 5 & 6 *W. & M. c.* 11. § 3. if the defendant be convicted.

And according to *R.* v. *The Inh. of Penderryn*, 2 *T. R.* 260., where a magistrate makes a presentment of a road, as being out of repair, and another person, by the magistrates' consent and approbation, sues out a *certiorari*, the *certiorari* is well sued out, though the Court will look to the magistrate as the person responsible. He is answerable for all the costs, if the presentment should turn out to be improper.

And in *R.* v. *The Inh. of Taunton St. Mary*, 3 *M. & S.* 465., it was held that upon an indictment against a parish for not repairing a highway, the right of repair may come in question so as to entitle the parish to remove it by *certiorari*, though the parish plead *not guilty* only, it being stated in an affidavit filed by the defendants, that on the trial of the indictment, the question, whether the parish were liable to repair, and the right to repair would come in issue. It was also held that several persons were entitled to costs under it as prosecutors of an indictment, removed by *certiorari*, for not repairing a highway; one, as constable of

13 G.3. c.78. the manor within which the highway lay; the others, as parties grieved; they having used the way for many years in passing and repassing from their homes to the next market town, and being obliged, by reason of the want of repair, to take a more circuitous route.

Presentment on oath. *R.* v. *The Inh. of Fylingdales*, 7 *B. & C.* 438. Where a magistrate presented a road in the township of *F.* "upon the information upon oath of *A. B.* surveyor of the highways for the township of *C.*, which is 35 miles distant from the township of *F.*," &c.; held, in arrest of judgment, that this presentment was bad, for that it did not appear that the information upon oath was given to the presenting magistrate, and the surveyor of the highways in *C.* had no authority under 13 *G.* 3. *c.* 78. § 24. to give information as to the road in *F.*

A new trial is not allowed after acquittal. The general rule of a new trial never being allowed where the defendant is acquitted in a criminal case, has been held to prevail in a prosecution for not repairing a highway, though such prosecution is usually carried on for the purpose of trying or enforcing a civil liability. *R.* v. *Mann*, 4 *M. & S.* 337. *R.* v. *Cohen & Jacob*, 1 *Stark. N.P.* 516. *See* 1 *Russ.* 483, 484. *R.* v. *Burbon*, *ante*, p. 852.

But where the defendants had been acquitted on an indictment for not repairing a road, the court of K. B. though they refused a new trial, yet, upon very special circumstances, suspended the entry of the judgment, so as to enable the parties to have the question reconsidered upon another indictment, without the prejudice of the former judgment. *R.* v. *The Inhab. of Wandsworth*, 1 *B. & A.* 63.

XVIII. Levying of Assessments, Fines, and Forfeitures.

[13 G.3. c. 78. § 47. 67, 68. 72, 73, 74, 75, 76, 77, 78, 79, 80.]

13 G.3. c.78. Sums assessed may be levied by distress and sale of the offender's goods. By stat. 13 *G.* 3. *c.* 78. § 67. If any person shall refuse or neglect to pay the sum or sums assessed upon him, by any assessment to be made in pursuance of this act, within ten days after demand thereof made, the same shall and may be levied by the surveyor, or any other person or persons authorised by warrant (Nos. XXXVII. a., XXXVIII.) under the hand and seal of one justice of the peace, having jurisdiction therein, by distress and sale of the goods and chattels of the person so refusing or neglecting, rendering the overplus to the owner or owners thereof, the necessary charges of making such distress and sale being first deducted; and in default of such distress, it shall be lawful for any such justice to commit (No. XXXIX.) the person so refusing or neglecting to the common gaol, there to remain until he shall have paid the sum so assessed, and the costs and charges occasioned by such neglect or refusal.

Surveyor may be a competent witness. § 68. The surveyor of any parish, township, or place, shall be deemed in all cases a competent witness, in all matters relative to the execution of this act, notwithstanding his salary may arise in part from the forfeitures and penalties hereby inflicted. See also § 76. *post*, p. 858.

The inhabitants of a parish, indicted for not repairing a highway, are not competent to give evidence for the defendants. *R.* v. *The Inhab. of Wandsworth*, 1 *B. & A.* 66. *See also* 15 *East*, 474. 1 *Phill. Ev.* 6th *Ed.* 119.

In a late case of an indictment for not repairing a highway, the prosecutor was examined as a witness for the prosecution, and no objection was taken to his competency; and it seems that a prosecutor in such a case is a competent witness; for though the court is authorised to award costs against him in case the proceeding shall appear to have been vexatious, yet the court would scarcely presume, in the first instance, that the prosecutor's conduct had been vexatious, so as to raise an objection to his competency; especially after the finding of a bill by the grand jury. *R.* v. *Hammersmith*, 1 *Stark. N. P.* 358. *note* (*a*).

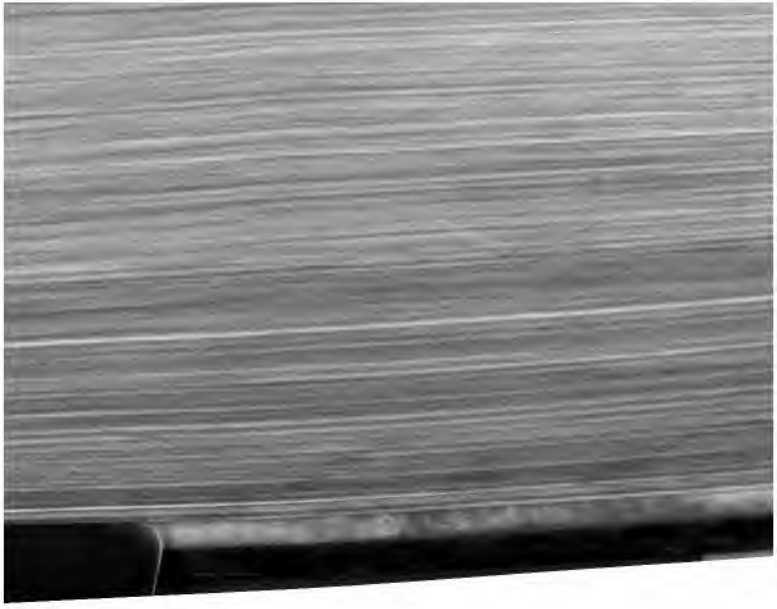
13 G.3. c.78. Fines.

By stat. 13 *G.* 3. *c.* 78. § 47. No fine, issue, penalty, or forfeiture, for not repairing highways, or not appearing to any indictment or presentment for not repairing the same, shall be returned into the exchequer or other court, but shall be levied by and paid into the hands of such person or persons residing in or near the parish, township, or place where the road shall lie, as the court imposing such fines, &c. shall order, to be applied towards the repair and amendment of such highways. And the person or persons so ordered to receive such fine shall receive, apply, and account for the same, according to the direction of such court, or in default thereof, shall forfeit double the sum received.

§ 47. If any fine, issue, penalty, or forfeiture to be imposed on any such parish, township, or place for not repairing the highways, or not appearing as aforesaid, shall be levied on one or more of the inhabitants of such parish, township, or place, then such inhabitant or inhabitants shall and may make his or their complaint to the justices of the peace at their special sessions; and the said justices are hereby empowered and authorised, by warrant under their hands and seals, to cause a rate to be made, according to the form and manner herein last before prescribed, for the reimbursing such inhabitant or inhabitants the monies so levied on him or them as aforesaid; which rate so made, and confirmed by any two justices, shall be collected and levied by the surveyor of the highways of such parish, township, or place, so presented or indicted as aforesaid; and the said surveyor shall, within one month next after the making and confirming the rate aforesaid, collect, levy, and pay unto such inhabitant or inhabitants the money so levied on him or them as aforesaid.

Only one fine can be imposed for the non-repair of a highway.

R. v. *The Inhab. of the Parish of Old Malton, Yorkshire Sum. Ass. 9th Aug.* 1794, *cor. Lawrence J.*, 4 *B. & A.* 470. (*n.*) This was an indictment for not repairing a highway. The defendants had submitted to a fine, which had been apportioned between the parishioners and the trustees of the turnpike (the road indicted being turnpike), pursuant to the power given by the general turnpike act. *Holroyd* applied for a further fine, the whole fine being laid out on the way, and the way being still out of repair. *Lawrence* J. doubted his power to give any further fine, on the ground that the Court had given their judgment; and though *Salk.* 358. (*vide* S. C. 6 *Mod.* 163.) states that the judgment is not at an end by the defendants coming in and submitting to a fine, and that if the road is not put in repair, *writs of distringas* shall issue against the defendants till the road is completed: he held, that those writs are now the only remedy on the present indictment; that the fine is the punishment for the neglect and offence of which the defendants are indicted: and though the Court may compel an actual



shall be made, rendering the overplus of such distress (if any be) to the party or parties, after deducting the charges of making the same: which warrant such justice is hereby empowered and required to grant, upon conviction of the offender by confession, or upon the oath of one or more credible witness or witnesses, or upon order made as aforesaid; and the penalties and forfeitures when so levied, shall be paid, the one half to the informer, and the other half to the surveyor of the highway where such offence, neglect, or default shall happen; to be applied towards the repair thereof, unless otherwise directed by this act; but in case the surveyor shall be the informer, then the whole shall be employed towards the repair of such highway; and in case such distress cannot be found, (No. XXXVII.) and such penalties and forfeitures, or the said costs and charges, shall not be forthwith paid, it shall and may be lawful for such justice, and he is hereby authorised and required, by warrant (No. XXXIX.) under his hand and seal to commit such offender or offenders, or person or persons, liable to pay the same respectively, to the common gaol or house of correction of the limit where the offence shall be committed, or such order as aforesaid shall be made, for any time not exceeding three months, unless the said penalty, forfeiture, costs, and charges, shall respectively be sooner paid; and if such offender or offenders, or person or persons, liable or ordered to pay the same respectively, shall live out of the jurisdiction of the justice hereby authorised to grant such warrant, it shall and may be lawful for any justice of the peace of the limit wherein such person shall inhabit, and every such justice is hereby required, upon request to him for that purpose made, and upon a true copy of the conviction whereby such forfeiture or penalty was incurred, and of the order for the payment of such costs and charges, produced and proved by a credible witness upon oath, by warrant under his hand and seal, to cause the penalty or forfeiture mentioned in such conviction, and the costs and charges mentioned in such order, or so much thereof as shall not have been paid, to be levied by distress and sale of the goods and chattels of such offender or offenders, or person or persons liable or ordered to pay the same respectively, as aforesaid; and if no sufficient distress can be had, to commit such offender or offenders, or person or persons, liable as aforesaid, to the common gaol, or house of correction of such limit, for the time, and in manner aforesaid.

18 G.3. c.78.

How to proceed where the offender lives within another jurisdiction.

§ 73. Provided, that no warrant of distress, unless otherwise directed by this act, shall be issued for levying any penalty or forfeiture, costs or charges, until six days after the offender shall have been convicted, and an order made and served upon him for payment thereof.

Distress as to penalties, not to be made till six days after conviction.

§ 74. Provided also, that every prosecutor or informer may, at his election, sue for and recover any forfeiture or penalty imposed by this act, which shall amount to 40*s.* or upwards (the manner of recovery thereof not being particularly directed by this act), either in the manner herein-before directed, or by action of debt in any of H. M.'s courts of record, in which it shall be sufficient to declare that the defendant is indebted to the plaintiff in the sum of ———, being forfeited by an act passed in the 13th year of the reign of his present majesty, intituled *An act to explain, amend,*

Penalties above 40*s.* may be sued for.

13 G.3. c.78. *and reduce into one act of parliament, the statutes now in being for the amendment and preservation of the public highways within that part of* Great Britain *called* England, *and for other purposes;* and the plaintiff, if he recover, shall have double costs.

§ 75. Provided, that there shall be no more than one recovery for the same offence; and that ten days' notice in writing be given to the party offending previous to the commencement of such action; and that the same be brought within one calendar month after the offence committed.

Witnesses. § 76. No conviction shall be had, unless upon confession or oath of one witness, or view of the justice.

§ 76. Any inhabitant of any parish, township, or place, in which any offence shall be committed contrary to this act, shall be deemed a competent witness, notwithstanding his or her being an inhabitant of such parish, township, or place.

§ 77. And any justice may administer an oath to any witness or other person, for the better discovery and execution of the several matters or things herein directed to be enquired into and performed by such justice.

Irregularity in the proceedings. § 78. Where any distress shall be made for any sum to be levied by virtue of this act, the distress shall not be deemed unlawful, nor the party making the same be deemed a trespasser, on account of any default or want of form in the proceedings; nor shall the party distraining be deemed a trespasser *ab initio* on account of any irregularity which shall be afterwards done by the party distraining, but the person aggrieved by such irregularity may recover full satisfaction for the special damage in an action on the case.

§ 79. No person shall recover in any action for any irregularity, trespass, or wrongful proceedings, if tender of sufficient amends shall be made before the action brought; and if no tender hath been made, the defendant by leave may pay into court such sum as he shall see fit, whereupon such proceedings shall be had as in other actions where the defendant is allowed to pay money into court.

Certiorari. § 80. And no proceedings had in pursuance of this act shall be quashed for want of form, or removed by *certiorari*, or any other process, into any of H. M.'s courts of record at *Westminster*.

XIX. Appeal.

[13 G. 3. c. 78. § 80.]

13 G.3. c.78. Appeal may be made to quarter sessions by the person aggrieved by any thing done in the execution of this act. By stat. 13 *G.* 3. *c.* 78. § 80. If any person shall think himself or herself aggrieved by any thing done by any justice or justices of the peace, or other person, in the execution of any of the powers given by this act, and for which no particular method of relief hath been already appointed, every such person may appeal to the justices of the peace, at any general quarter sessions of the peace to be held for the limit wherein the cause of such complaint shall arise, such appellant giving, or causing to be given, notice in writing (No. XL.) of his or her intention to bring such appeal, and of the matter thereof, to the justice, or other person or persons against whom such complaint shall be made, within six days after the cause of such complaint arose, and within four days after such notice, entering into recognisance before some justice of the peace within such limit, with one sufficient surety, con-

ditioned to try such appeal at, and abide the order of, and pay such costs as shall be awarded by the justices, at such quarter session; and every justice of the peace, and other person having received notice of such appeal as aforesaid, shall return all proceedings whatsoever had before them respectively touching the matter of such appeal to the said justices, at their general quarter sessions aforesaid, on pain of forfeiting 5*l.* for every such neglect; and the said justices at such sessions, upon due proof of such notice being given as aforesaid, and of the entering into such recognisance, shall hear and finally determine the causes and matters of such appeal in a summary way, and award such costs to the parties appealing or appealed against, as they the said justices shall think proper; to be levied and recovered as herein-before directed; and the determination of such quarter session shall be final and conclusive, to all intents and purposes; and no proceedings to be had or taken in pursuance of this act shall be quashed or vacated for want of form, or removed by *certiorari*, or any other writ or process whatsoever, (except as herein-before mentioned,) into any of H. M.'s courts of record at *Westminster*: Provided that no such appeal shall be made against any conviction for any penalty or forfeiture incurred by virtue of this act, unless the person convicted shall, at the time of such conviction, if he or she shall be then present, if not, within six days after, give notice of his or her intention to appeal, and at the same time enter into recognisance, with sufficient sureties, to pay such penalty or forfeiture, in case such conviction shall be affirmed upon such appeal; and upon his or her giving such security, the further proceeding for such penalty or forfeiture shall be suspended until such appeal shall be heard and determined.

13 G.S. c. 78.

No proceedings to be quashed for want of form, or removed by certiorari.

If any person shall think himself aggrieved.] Under this clause it has been holden that no appeal lies against the allowance of the surveyor's accounts. The 80th section only gives an appeal in cases where there is no other remedy. But in this case relief is provided by the 48th section. The books of accounts, after having been examined by the inhabitants at a vestry, are to be taken to one justice, who may allow such accounts, if he please; but if he has any difficulty, he may refer them to the petty sessions, where they are to be examined and allowed, "and when the said accounts shall be so settled and allowed," that is, either by the single justice, or by the petty sessions, they are to be kept for the use of the parish. This mode of allowing the accounts was prescribed for the purpose of preventing any appeal to the quarter sessions. It is immaterial whether the accounts are first taken to one magistrate, and afterwards to the petty sessions; or whether they are taken at once to the petty sessions. In neither case does an appeal lie to the quarter sessions. *R.* v. *Just. of the W. Riding of Yorkshire*, 5 *T. R.* 629., and *R.* v. *W. Mitchell*, *ib.* 701.

No appeal lies against the surveyor's accounts.

Within six days after the cause of such complaint arose.] *R.* v. *Just. of Devon*, 1 *M. & S.* 411. A rule was obtained for a *mandamus* to the justices of *Devon* to receive an appeal against a distress for nonpayment of a sum assessed under the highway act. — The party assessed having refused to pay, a warrant of distress was signed and granted by two justices on the 4th of *December*, which was executed on the 12th; the party thereupon gave notice of appeal within six days after the 12th *December*. The ses-

Time allowed for appeal against a warrant of distress for a highway rate.

sions dismissed the appeal, being of opinion that notice ought to have been given within six days after the *date* of the warrant, not the *execution* of it. It was contended against the motion, that the notice which was directed to be given "*within six days after the cause of complaint arose*," must mean "six days after the date of the *warrant*," which was the cause of complaint, not the *levy*, which was only consequent upon it. It was also objected, that the notice merely stated that a distress was made, without disclosing the grounds; upon which it was contended it was irregular.—Lord *Ellenborough* C. J. said, Suppose notice of action against a magistrate for taking goods, would it not be sufficient to state that he had taken the goods under a warrant, and that the party intended to bring an action thereupon? The *onus* lies on the other side to show the legality of the distress.—Then as to the time, the party appealing was within six days after he was actually damnified. It is not necessary he should appeal on the warrant; for *non liquet* that it would be proceeded upon.—Rule absolute.

XX. Limitation of Actions.

[13 G. 3. c. 78. § 81.]

13 G.3. c.78.

By 13 *G.* 3. *c.* 78. § 81. Actions for any thing done in pursuance of this act shall be commenced within three calendar months after the fact committed, and be brought within the proper county, and the defendant may plead the general issue, and give this act and the special matter in evidence, and that the same was done in pursuance hereof; and if it so appear, or if such action is brought after the time limited, or is laid in the wrong place, the jury shall find for the defendant, or if the plaintiff is nonsuited, discontinues after appearance, or has judgment against him on demurrer, the defendant shall have treble costs, with the usual remedy to recover the same. *See Roberts* v. *Reed and others*, 16 *East*, 215.

Forms in the act to be used. See stats. 13 G.3. c.78. 34 G.3. c.64.

The forms of proceedings under this title are specially directed by the several acts to be used upon all occasions, with such additions or variations only as may be necessary to adapt them to the particular exigencies of the case. And no objection shall be made, or advantage taken, for want of form in any such proceedings. A material variation from the form prescribed is fatal, and may be taken advantage of in a collateral proceeding. *Davidson* v. *Gill*, 1 *East*, 64.

Such other forms as appeared requisite have been added.

No. I.

No. I. Warrant for calling the Meeting of Householders, &c. and for fixing that of the Justices for appointing Surveyors, *Vide* stat. 13 *G.* 3. *c.* 78. § 1. *ante*, p. 787.

Middlesex. { To the constables, headboroughs, and tithingmen, within the (*hundred*, *riding*, *division*, *liberty*, or *precinct*,) (*as the case shall be*) of ———, in the said county.

IN order to carry into execution an act made in the 13th year of the reign of his majesty King George *the third*, for the amendment and preservation of the public highways, *you are hereby*

severally required forthwith to give public notice to the churchwardens, surveyors of the highways, and householders, being assessed to any parochial or public rate within your respective liberties, that they do assemble on the 22d day of September next, at the church or chapel, or if there shall be no church or chapel, then at the usual place of public meetings within their respective liberties, at the hour of 11 *in the forenoon; and that the major part of them so assembled do make a list of the names of at least ten persons living therein, who each of them have an estate in lands, tenements, or hereditaments, lying within the same, in their own right, or in right of their wives, of the value of* 10*l. by the year; or a personal estate of the value of* 100*l.; or are occupiers or tenants of houses, lands, tenements or hereditaments, of the yearly value of* 30*l. And if there shall not be ten persons having such qualifications, then that they do insert in such list the names of so many of such persons as are so qualified, together with the names of the most sufficient and able inhabitants not so qualified, as shall make up the number ten, if so many can be found, if not, so many as shall be there resident, to serve the office of surveyor of the highways: And you are also severally required within three days after making the said list to deliver a copy thereof to one of the justices of the peace of the said* [hundred, riding, division, &c.] [as the case shall be,] *living in or near the same* [parish, &c.]*; and also to give personal notices to, or cause notices in writing to be left at the places of abode of the several persons contained in such lists, informing them of their being so named, to the intent that they may severally appear before the said justices at their special sessions to be holden at* ———, *within the said* [hundred, &c.] *on the* ——— *day of* ———, *now next ensuing, at the hour of* ——— *in the forenoon of the same day, to accept such office, if they shall be appointed thereto, or to show cause, if they have any, against their being appointed; and you are likewise to give notice to the present surveyors of the highways, within your respective liberties, to appear at the same time and place, and produce such accounts and lists before the said justices as are required by the said act; and you and each of you are personally to appear before the said justices, at their said special sessions, and then and there severally deliver to the said justices the said original list or lists taken within your respective liberties, and give an account of the execution of this our precept. Given under our hands and seals, the* ——— *day of* ——— *in the year of our Lord* ———.

No. II. List of Persons to be returned to the Justices, *Vide* stat. 13 *G.* 3. *c.* 78. § 1. 5. *ante*, p. 787. 791. No. II.

A LIST of the several persons named for surveyors of the highways for the [insert the name of the parish, township, or place], *at a meeting held at* ———, *in the said* ———, *the* ——— *day of* ———.

A. B.
C. D. &c.

[This is to be added when a particular person is recommended.]

We whose names are subscribed, being two parts in three of the persons assembled at the meeting aforesaid, do agree in the choice of A. S. *as a fit person to serve the office of surveyor for the* ——— *of* [insert the parish, &c.] *aforesaid, and in the allowance to him of*

——— *for his trouble in executing the same for the year ensuing; and we do recommend the said* A. S. *to the justices for their appointment accordingly.*

No. III. No. III. Notice to the Persons contained in the List. *Vide* p. 788.

A. B. *take notice, that you were at a meeting held at* [insert the name of the parish, &c.] *on the* ——— *day of* ———, *named as one of the persons to be returned to the justices as fit to serve the office of surveyor for the said* [parish, &c.] *for the year ensuing; and if you have any cause to show why you should not be appointed to serve such office, you must make the same appear before the justices, at their special sessions, to be holden at* ———, *on the* ——— *day of* ——— *next.*

A. B. { *Constable, Headborough, or Tithingman,* [as the case shall be.]

No. IV. No. IV. Order to the Constable, &c. to return to the Justices the Amount of a Sixpenny Assessment. *Vide* stat. 13 G. 3. *c.* 78. § 7. *ante*, p. 789.

County of ———. To the constable, &c. of ———.

YOU are hereby required to return to us, and the other justices, to be assembled at the special sessions to be held at ———, *for the hundred, &c. of* ———, *in the said county, on the* ——— *day of* ——— *next, the amount of the last assessment of sixpence in the pound, for the use of the highways within your liberty, if any such has been raised; if not, what you apprehend, from the best information you can get, an equal assessment of sixpence in the pound upon all and every the occupiers of lands, tenements, woods, tithes, and hereditaments, within the said liberty, according to their yearly value, will amount to. Given under our hands, this* ——— *day of* ———, 18—.

No. V. No. V. Return to the Justices of the Amount of a Sixpenny Assessment. *Vide ante*, p. 789.

To the justices, assembled at their special sessions at ——, the ——— day of ———.

IN obedience to your order, I do return and certify, that the last assessment of sixpence in the pound, for the use of the highways within the liberty of ———, *amounted to the sum of* ———.

[If no assessment of sixpence in the pound has been made, then as under.]

IN obedience to your order, I do return and certify, that no assessment hath been made of sixpence in the pound, for the use of the highways within the liberty of ———; *but I apprehend, from the best information which I have been able to get, that an equal assessment of sixpence in the pound, upon all the occupiers of lands, tenements, woods, tithes, and hereditaments, within the said liberty, will amount to the sum of* ———.

A. B. (*Constable, &c.*)

No. VI. Appointment of a Surveyor. *Vide* p. 788. No. VI.

County of ——— { At a special sessions, held at ———, in the hundred of ———, by justices of the peace for the said county, acting within the said hundred, on the ——— day of ———, 18—.

WE do hereby nominate and appoint A. S. *of* [insert the name of the parish, &c. where he lives] *in the said hundred, surveyor* [or, *surveyors*] *of the highways within the said* ———, *for the year ensuing* (a): *And you the said* A. S. *are faithfully and truly to execute the said office of surveyor according to the directions of the statute passed in the thirteenth year of the reign of his majesty King* George *the third,* for the amendment and preservation of the highways; *an abstract of the material part of which statute is hereunto annexed. Given under our hands and seals the day and year above mentioned.*

No. VII. Bond from the Surveyor. *Vide* stat. 13 *G.* 3. *c.* 78. § 3. *ante,* p. 791. No. VII.

WE A. B. *surveyor of the highways for the* [parish, township, &c.] *of* ———, *and* C. D. *of* ———, *are bound to* E. F. *of* ———, *aforesaid, in the sum of* ——— *pounds, to be paid to the said* E. F., *his executors, administrators, or assigns; for which payment we hereby bind ourselves severally, and each of our heirs, executors, and administrators. Dated the* ——— *day of* ———, 18—.

The condition of this bond is such, that if the said A. B., *his executors, or administrators, shall duly and faithfully account for, apply, and pay, all and every the sum and sums of money which shall come to his hands, as surveyor of the highways for the parish, &c. according to the direction and true intent and meaning of the statute made in the thirteenth year of the reign of his majesty King* George *the third,* for the amendment and preservation of the highways; *then this bond to be void, or else to remain in full force.*

No. VIII. Appointment of an Assistant to the Surveyor. *Vide* stat. 13 *G.* 3. *c.* 78. § 2. *ante,* p. 790. No. VIII.

Middlesex. { At a special sessions, held at ———, in the hundred of ———, by justices of the peace for the said county, acting within the said hundred, on the ——— day of ———.

WE do hereby nominate and appoint A. S., *a substantial inhabitant of the* ——— *of* ———, *in the said hundred, assistant to* A. B., *whom we have appointed surveyor of the highways for the said* ———. *And you the said* A. S. *are to the best of your skill and judgment to assist the said surveyor, whenever requested by him, in calling in and attending the performance of the statute duty, in collecting the compositions, fines, penalties, and forfeitures, and in making and collecting the assessments, and in making out and serving*

(a) If a surveyor is appointed with a salary, then after the words *year ensuing,* add, *and we do allow the said* A. S. *the salary of* ——— *for his trouble.*

the notices authorised by the act, passed in the thirteenth year of the reign of his majesty king George *the third,* for the amendment and preservation of the highways, *and in such other matters and things as shall be reasonably required of you by the said surveyor, in the execution of the office of surveyor, pursuant to the said act; and you are justly and truly to account with, and pay to the said surveyor, or to his order, the money which shall come to your hands by the means aforesaid. Given under our hands and seals, the day and year above mentioned.*

No. IX.

No. IX. Oath to be administered to the Surveyor upon passing his Accounts. *Vide* stat. 13 *G.* 3. *c.* 78. § 48. p. 847.

I A. B. *do swear, that the accounts now produced and delivered by me, as surveyor of the highways for the parish, &c. of* ———, *for the last year, are just and true, to the best of my knowledge.*

So help me GOD.

No. X.

No. X. Allowance of the Accounts. *Vide* p. 847.

October, ——.

THESE accounts were examined and allowed before ———.

No. XI.

No. XI. Notice from the Surveyor to remove Nuisances and Obstructions, and to cut Hedges, &c. *Vide* stat. 13 G. 3. *c.* 78. § 7. p. 822. 824.

To *C. D. of* ———.

IN pursuance of the directions given by the act, passed in the thirteenth year of the reign of his majesty king George *the third,* for the amendment and preservation of the highways, *I* A. B. *surveyor of the highways for the parish, &c. of* ———, *do hereby give you notice, forthwith to remove the dung,* [*timber, stone, &c.*] *placed by you in a certain part of the king's highway, lying between* ——— *and* ———, *in the parish, &c. of* ———, *to the obstruction and annoyance of the said highways:* or, [*forthwith to cut, prune, and plash the hedges, and cut or prune the trees, and to open, cleanse, and scour, the several ditches and watercourses, belonging to you in or near the highway, lying between* ——— *and* ———, *to the intent that the water may be drained from the said highway, and that the sun and wind may not be excluded from such highway, to the prejudice thereof.*] *Dated this* —— *day of* ———.

A. B.

To remove nuisances and obstructions.

To cut and prune hedges, and to cut or prune trees, and to open and scour ditches and watercourses.

No. XII.

No. XII. Allowance of Charges and Expenses paid by Surveyors, which are to be repaid by the Possessors of the Lands, &c. and Order of the Justices for that Purpose. *Vide* stat. 13 *G.* 3. *c.* 78. § 12. *ante,* p. 825.

Middlesex. { *WHEREAS complaint hath been made unto us* A. B. *esquire, one of his majesty's justices of the peace for the said county, by the oath of* ———, *surveyor of the highways for the parish of* ———, *in the said county, that*

C. D. *of* ——— *having had due notice to cut and prune his hedges, and cleanse and scour his ditches and watercourses, within or adjoining to the public highway, between* ——— *and* ———, *in the said parish of* ———, *hath neglected to do the same within the time required by such notice; and that the said* ——— *hath caused the same respectively to be cut, pruned, cleansed, and scoured, pursuant to the directions of the act, passed in the thirteenth year of the reign of his majesty King* George *the third,* for the amendment and preservation of the highways, *and hath expended therein the sum of* ———, *as appears by an account now produced to me, which I think a reasonable charge, and do therefore allow the same, and hereby order the said* C. D. *to pay the said sum of* ——— *to the said* ——— *within six days from the time of his being served with this order. Given under my hand and seal, this* —— *day of* ———.

No. XIII. Order of a Justice of Peace to make new Drains. *Vide* stat. 13 *G.* 3. *c.* 78. § 14. p. 823. No. XIII.

To *C. D.* of ———, surveyor of the highways for the parish, &c. of ———.

Middlesex. { *WHEREAS complaint hath been made to me* A. B. *esquire, one of his majesty's justices of the peace, for the said county, that the ditch, gutter, or watercourse, for conveying the water from the highway at* ———, *in the parish, &c. of* ———, *in the said county, is not sufficient for that purpose, and that the cleansing and opening the same will not effectually carry off the said water, but that the said highway may be effectually drained, and the water carried off, by making a new ditch or drain through the lands or grounds of* ———, *lying near the same, for the length of* ——— *yards, and the breadth of* ——— *feet; and the said* ——— *having been duly summoned to appear before me, to show cause, if he had any, why the said ditch or drain should not be made, and the said* ——— *not appearing,* [or, *not showing sufficient cause against the same,*] *and it appearing to me that such ditch or drain is necessary, I do hereby order and require you to enter into and upon the said lands of the said* ———, *and there make, or cause to be made, a new ditch or drain, of the length and breadth aforesaid, and of a convenient depth, making or tendering sufficient satisfaction to the said* ———, *for the damages to be done thereby, within one calendar month after the same shall be so made; such damages to be settled and ascertained in manner directed by the act, passed in the thirteenth year of the reign of his majesty King* George *the third,* for the amendment and preservation of the highways. *Given under my hand, this* ——— *day of* ———.

No. XIV. Notice of Application to be made for an Assessment. *Vide* stat. 13 *G.* 3. *c.* 78. § 45. p. 844. No. XIV.

Middlesex. { *NOTICE is hereby given, that application will be made to the justices of the peace acting for the hundred of* ——— *in the said county, at their special sessions, to be held at* ——— *in the said hundred, on the* ——— *day of* ———, *for an equal assessment to be made, not exceeding*



the length of ——— *yards, or thereabouts, and particularly described in the plan hereunto annexed, is, for the greatest part thereof narrow,* and cannot be conveniently enlarged and made commodious for travellers, without diverting and turning the same; and having viewed a course proposed for the said new highway, through *the lands and grounds of* ——— *and* ———, *of the length of* ——— *yards, or thereabouts, and of the breadth of* ——— *feet, or thereabouts, particularly described in the plan hereunto annexed, which we think will be much more commodious to the public; we do hereby order, that the said highway be* diverted and turned *through the lands aforesaid; and that the surveyor of the highways for the parish, &c. of* ———, *where the said old highway lies, do forthwith proceed to treat and make agreement with the said* ——— *and* ——— *for the recompence to be made for the said ground, and for the making such ditches and fences as shall be necessary, in such manner, with such approbation, and by pursuing such measures and directions in all respects as are warranted and prescribed by the statute, made in the thirteenth year of the reign of his majesty King* George *the third,* for the amendment and preservation of the highways; *and in case such agreement shall be made as aforesaid, we do order an equal assessment, not exceeding the rate of sixpence in the pound, to be made, levied, and collected, upon all and every the occupiers of lands, tenements, woods, tithes, and hereditaments, in the said parish, &c. of* ———, *and that the money arising thereupon be paid and applied in making such recompence and satisfaction as aforesaid, pursuant to the directions of the said act.*

(When it is only to be widened, leave out the words in Roman, and insert) *But may be conveniently enlarged and widened, by adding thereto from* ——— or, *widened and enlarged.*

A. B.
C. D.

No. XVII. Certificate from the said Justices to the Court of Quarter Session. *Vide* stat. 13 *G.* 3. *c.* 78. § 16, p. 888.

No. XVII.

To the justices of the peace, at their general quarter sessions, to be held at ——— in the said county, the ——— day of ———.

This is to be written upon the above order, when no agreement can be made.

WE, the within-named A. B. *and* C. D. *do hereby certify to the said court of quarter sessions, that we made and signed the within order; and that with our approbation, and by our direction, the said surveyor hath treated with the said* ——— *and* ——— *for the said lands required for the purposes aforesaid, but was not able to make any agreement for that purpose with them, or either of them; and that he tendered to the said* ——— *the sum of* ———, *and to the said* ——— *the sum of* ———, *as a recompence for the said ground, and for the making the said ditches and fences, which they, and each of them, refused to receive.*

A. B.
C. D.



part of a highway, &c., within the parish, &c. of ———, *in the said hundred, lying between* ——— *and* ———, *for the length of* ——— *yards, or thereabouts, and particularly described in the plan hereunto annexed, may be diverted and turned so as to make the same nearer* (*or*, more commodious) *to the public; and having viewed a course, proposed for the new highway, in lieu thereof, through the lands and grounds of* ———, *of the length of* ——— *yards, or thereabouts, and of the breadth of* ——— *feet, or thereabout, particularly described in the plan hereunto annexed, and having received evidence of the consent of the said* ——— *to the said new highway being made through his lands hereinbefore described, by writing under his hand and seal, we do hereby order, that the said highway be diverted and turned through the lands aforesaid; and we do order an equal assessment,* &c. (in the same form as before mentioned.)

No. XXII. Consent from the Owners of the Land through which a New Highway is proposed to be made. *Vide* stat. 55 *G.* 3. *c.* 68. § 2. p. 835. No. XXII.

I A. B. *of* ———, *in the county of* ———, *being owner of the lands described in the plan hereunto annexed, through which part of a certain highway, lying between* ——— *and* ——— *is intended to be diverted and turned, in consideration of the sum of* ———, *to be paid to me for the said land, and the soil thereof;* or, *in consideration of the said old highway being sold, exchanged, and to be vested in me, and also of the sum of* ———, *to be paid to me,* [as the case may be] *do hereby consent to the making and continuing such new highway through my said lands. Given under my hand and seal, this* ——— *day of* ———.

No. XXIII. Licence from Justices of Peace, at a Special Sessions, to get Materials for the Repair of the Highways in another Parish, besides that wherein such Materials are to be employed. *Vide* stat. 13 *G.* 3. *c.* 78. § 27. p. 819. No. XXIII.

Middlesex. { At a special sessions, held at ———, for the hundred of ———, in the said county, by justices of the peace for the said county acting within the said hundred, on the ——— day of ———, 18—.

IT appearing to us, upon evidence, this day received, that sufficient materials cannot conveniently be had within the waste lands, common grounds, rivers, or brooks, nor in the enclosed lands or grounds lying within the parish, &c. of ———, *in the said hundred, for the repair of the highways within the said parish, &c., nor in the waste lands, common grounds, rivers, or brooks, within the parish of* ———, *adjoining to the said parish, &c. of* ———, *we do hereby give our licence to the surveyor for the said parish of* ———, *to search for, dig, get, and carry sand, gravel, chalk, stone, and other materials, within the enclosed lands or grounds of* C. D. *within the said parish, &c. of* ———, *to be employed in the repair of the highways within the said parish of* ———, *it appearing from evidence laid before us, that there are proper materials*



and preservation of the highways, *the surveyors are authorised to gather stones lying upon any lands or grounds within their liberty, for the use and benefit of the highways, but not without the consent of the occupiers of such lands, or a licence from a justice of peace for that purpose: And whereas it appears to me* E. F., *one of his majesty's justices of the peace for the said county, and acting within the said hundred, &c., upon the oath of the said surveyor, that he hath applied to* A. B. *of* ———, *for his consent to gather stones from the lands, called or known by the names of* ——— *and* ——— *in his occupation, within the said parish, &c., for the purposes aforesaid, and that the said stones are necessary for the repair of the said highways, and that the said* A. B. *hath refused to permit the same to be gathered; and the said* A. B. *having been duly summoned to appear before me, to show cause why such permission should not be granted, and* [having appeared before me accordingly]; *or,* [having sent his steward or agent]; *or,* [*C. D.* on his behalf, to attend me upon that occasion]; *or,* [but not having appeared] *I have heard what has been alleged, and taken the said matter into consideration, and am of opinion, that the said stones are necessary, and ought to be gathered and carried away for the purposes aforesaid; therefore I do hereby give my licence to the said surveyor to take and carry away the same accordingly. Given under my hand and seal, the* ——— *day of* ———, 18—.

No. XXV. Notice to perform Statute-duty (to be given four Days before the Day on which the Duty is to be performed). *Vide* stat. 13 *G.* 3. *c.* 78. § 37. *ante*, p. 816. No. XXV.

A. B. *you are hereby required to send a team, with two able men, to* ———, *within the parish, &c. of* ———, *on the* ——— *and* ——— *days of* ——— *next, at* ——— *o'clock in the morning of each day, in order to perform such duty upon the highways within the said* ——— *as shall be required by the surveyor, pursuant to the direction of the act, passed in the thirteenth year of the reign of his majesty King* George *the third,* for the amendment and preservation of the highways. [When personal labour is required, *you are hereby required, by yourself, or a sufficient labourer, to attend, &c.*] *Dated this* ——— *day of* ———, 18——.

If he does not occupy lands, &c. of the yearly value of 30*l.* in such parish, &c. he is only to send one man.

If a waggon, or a cart with two horses, or one horse only is required, let it be expressed.

No. XXVI. Notice for Compositions. *Vide* stat. 13 *G.* 3. *c.* 78. § 41. *ante*, p. 814. No. XXVI.

NOTICE is hereby given, that all persons who are inclined to compound for their statute-duty within the parish, &c. of ———, *are hereby required to signify their intention to compound for the same to* ———, *the surveyor of the highways for the said parish, &c. at the house of* ———, *of* ———, *on the* ——— *day of this inst.* November, *between the hours of* ——— *and* ———, *and they are hereby required, at the same time, or within the space of one month after, to pay their composition-money to the said surveyor; and also that all persons who are liable to pay money for the lands, tenements, woods, tithes, and hereditaments which they occupy, or, in lieu of their duty within the said parish, &c. according to the act made in the thirteenth year of his majesty King* George *the third,* for the



No. XXIX. Order of the Justices at their Special Sessions, for the Repair of certain Highways which most want Repair. *Vide* 13 G. 3. *c.* 78. § 25. p. 816. No. XXIX.

Middlesex. { At a special sessions held at ———, in the hundred of ———, in the said county, the ——— day of ———, by justices of the peace for the said county acting within the said hundred.

To the surveyors of the highways for the parish, &c. of ———, in the said hundred.

IT appearing to us that the highway lying between ——— and ———, within your liberty, is very founderous, and in bad repair, and being of great public use, we do hereby order, that you repair, or cause the same to be repaired, before the ——— day of ——— next. Given under our hands and seals, this ——— day of ———.

No. XXX. A Precept for erecting Guide posts, &c. *Vide* 13 G. 3. *c.* 78. § 26. p. 828. No. XXX.

Middlesex. { At a special sessions, held at ———, for the hundred of ———, in the said county, before justices of the peace for the said county, acting within the said hundred, on the —— day of ——.

To the surveyor of the parish of ———, in the said hundred.

YOU are hereby required forthwith to erect, or cause to be erected in the most convenient place upon the highway lying between ——— and ———, within your liberty, where the roads cross or branch out, a guide-post, with proper inscriptions painted on both sides thereof, in large legible letters, denoting the towns of ——— and ——— [or other places, as the justices shall think most proper].

[Where graduated stones or posts are necessary to prevent accidents from deep waters, vary it as under.] *In the most convenient place upon the highway, at the approach or entrance on each side of the ford or water called ——— at ———, within your liberty, graduated posts, denoting the depth of water in the deepest part thereof, through which such highway passes; and you are allowed to charge the reasonable expenses of providing and erecting the same in your accounts.*

A. B.
C. D.

No. XXXI. Notice for holding a Vestry, or other public Meeting. *Vide* stat. 13 G. 3. *c.* 78. § 66. *ante*, p. 851. No. XXXI.

NOTICE is hereby given, that a vestry, or public meeting, will be held at ———, on the ——— day of ——— next, at the hour of ——— in the ——— noon, in order to consult about the times when it will be most convenient for the inhabitants of this parish, &c. to be excused from being called forth to perform their statute duty, according to the indulgence given them by the act, passed in the thirteenth year of the reign of his majesty

King George *the third*, for the amendment and preservation of the highways. *Dated the* ——— *day of* ———.

A. B. *constable*, [*headborough*, &c.]

No. XXXII.

(a) This form of presentment is confined to cases of non-repair. *Rex* v. *Winter*, 18 *East*, 258. Vide *ante*, § XVI. p. 848.

No. XXXII. Presentment by a Justice of Peace. (a) *Vide* stat. 13 *G.* 3. *c.* 78. § 24. p. 853.

Middlesex. { *AT the general quarter sessions of the peace of our lord the king, held for the said county, at* ———, *in the said county, on* ——— *the* ——— *day of* ———, *in the* ——— *year of the reign of* ———, *before* ——— *esquires, and others, their companions, justices of our said lord the king, assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed;* A. B. *esquire, one of the justices of our said lord the king, assigned for the purposes aforesaid, by virtue of an act, made in the thirteenth year of the reign of his majesty King* George *the third*, for the amendment and preservation of the highways, *upon his own view*, [or, *upon information, upon oath, to him given by* C. D., *surveyor of the highways for the parish, &c. of* ———, *in the said county,*] *doth present, that from the time whereof the memory of man is not to the contrary, there was, and yet is, a certain common and ancient king's highway, leading from the town of* ——— *in the said county, &c. towards and unto* ———, *within the same county, used for all the king's subjects, with their horses, coaches, carts, and carriages, to go, return, and pass at their will; and that a certain part of the same king's common highway, commonly called* ———, *situate, lying, and being in the parish &c. of* ———, *in the same county, containing in length* ——— *yards, and in breadth* ——— *feet, on the* ——— *day of* ———, *in the* ——— *year of the reign of* ———, *and continually afterwards, until the present day, was, and yet is, very ruinous, deep, broken, and in great decay, for want of due reparation and amendment, so that the subjects of the king, through the same way, with their horses, coaches, carts, and carriages, could not, during the time aforesaid, nor yet can go, return, or pass as they ought and were wont to do, to the great damage and common nuisance of all the king's subjects through the same highway, going, returning, or passing, and against the peace of our said lord the king, and that the inhabitants of the parish, &c. of* ——— *aforesaid, in the county aforesaid, the said common highway (so in decay) ought to repair and amend, when and so often as it shall be necessary. In testimony whereof, the said* A. B. *to these presents hath set his hand and seal, this* ——— *day of* ———, *in the year aforesaid.*

This to be inserted where it is upon the information of the surveyor.

No. XXXIII.

No. XXXIII. Summons for any Person or Persons to attend a Justice or Justices. *Vide* p. 856.

Middlesex. To A. B. of ———.

WHEREAS complaint and information hath been made upon oath before me C. D., *one of his majesty's justices of the peace for the said county &c., by* E. F. *of* ———, *that, &c.* [here state the nature and circumstances of the case, as far as it shall be necessary to show the offence, and to bring it within the authority of the justice, and in doing that, follow the words of the act as near as

may be.] *These are therefore to require you personally to appear before me,* [or, *the justices to be assembled at their special sessions to be holden*] *at* ———, *in the said county, &c. on the* ——— *day of* ——— *next, at the hour of* ——— *in the* ——— *noon, to answer to the said complaint and information, made by the said* E. F., *who is likewise directed to be then and there present, to make good the same. Herein fail not. Given under my hand and seal, this* ——— *day of* ———.

No. XXXIV. Information. *Vide* p. 856. No. XXXIV.

Middlesex. { *BE it remembered, that on the* ——— *day of* ———, A. B. *of* ———, *in the said county, informeth and maketh oath before me* ———, *one of his majesty's justices of the peace for the said county, that* ——— *of* ———, *in the said county,* [here describe the offence, and if it is for default in performing statute-duty, state the duty required, and the notice given for that purpose, and the neglect according to the fact, and as near the words of the act as may be,] *contrary to the statute made in the thirteenth year of the reign of his majesty King* George *the third,* for the amendment and preservation of the highways, *which hath imposed a forfeiture of* ——— *for the said offence.* A.B.

Taken and sworn, the ——— *day of* ———, *before me,*

No. XXXV. Form of a Conviction. *Vide* p. 856. No. XXXV.

Middlesex. { *BE it remembered, that on the* ——— *day of* ———, *in the year of our Lord* ———, *at* ———, *in the county aforesaid,* A. B. *came before me* C. D. *esquire, one of his majesty's justices of the peace for the said county, and informed me that* E. F. *of* ———, *on the* ——— *day of* ——— *now last past, at* ———, *in the said county, did* [here set forth the fact in the manner described by the statute], *whereupon the said* E. F., *after being duly summoned to answer the said charge, appeared before me,* ———, *on the* ——— *day of* ———, *at* ———, *in the said county, and having heard the charge contained in the said information, declared that he was not guilty of the said offence; but the same being fully proved upon the oath of* G. H., *a credible witness, it manifestly appears to me, the said justice, that he the said* E. F. *is guilty of the offence charged upon him in the said information: it is therefore considered and adjudged by me, the said justice, that the said* E. F. *be convicted, and I do hereby convict him of the offence aforesaid; and I do hereby declare and adjudge, that he the said* E. F. *hath forfeited the sum of* ———, *of lawful money of* Great Britain, *for the offence aforesaid, to be distributed as the law directs, according to the form of the statute in that case made and provided. Given, &c.*

This to be inserted where the party refuses to appear upon the summons.

After the words, "*being duly summoned to answer to the said charge,*" insert, *did not appear before me, pursuant to the said summons:* [or, *did neglect and refuse to make any defence against the said charge; but the same being fully proved, &c.* as before.]

This to be inserted when the party accused confesses the charge.

After the words, "*contained in the said information,*" insert, *acknowledged and voluntarily confessed the same to be true, and it manifestly appears to me the said justice, &c.* as above.

No. XXXV. a.

No. XXXV. a. Order for Payment of a Forfeiture. (a)

Vide p. 856.

Middlesex. { To *A. O.* of ———, in the county of ———, labourer.

WHEREAS you the said A. O. *are duly convicted before me,* J. P. *esq., one of his majesty's justices of the peace for the said county, for that you the said* A. O. [here describe the offence as set forth in the information], *whereby you have forfeited the sum of* ———: *I do therefore hereby order you the said* A. O. *forthwith* [or, *within such time as the act directs*], *to pay to* A. S., *surveyor of the* ——— *of* ———, *in the said county, the said sum of* ———, *to be by him disposed of as the law directs. Given under my hand and seal, the* ——— *day of* ———, *one thousand eight hundred and* ———.

No. XXXVI.

(a) Not to be issued till after six days from service of the order for payment.

No. XXXVI. Warrant to distrain for the Forfeiture. (a)

Vide stat. 13 *G.* 3. *c.* 78. § 7. p. 823.

Middlesex. { To the constable, headborough, or tithingman, of ———.

WHEREAS A. B. *of* ———, *in the said county, yeoman, is this day convicted before me,* C. D. *esq., one of his majesty's justices of the peace in and for the said county, upon the oath of* G. H. *a credible witness, for that the said* A. B. *hath* [here set forth the offence, describing it particularly in the words of the statute, as near as may be,] *contrary to the statute in that case made and provided, by reason whereof the said* A. B. *hath forfeited the sum of* ———, *to be distributed as herein is mentioned, which he hath refused to pay: These are therefore, in his majesty's name, to command you to levy the said sum of* ———, *by distress of the goods and chattels of him the said* A. B.; *and if within the space of four days next after such distress by you taken, the said sum, together with the reasonable charges of taking and keeping the same, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale, that you do pay one half of the said sum of* ——— *to* E. F. *of* ———, *who informed me of the said offence, and the other half of the said sum of* ——— *to* J. K., *the surveyor of the highways, for the parish, township, or place where the said offence, neglect, or default happened, to be employed towards the repair of the said highways, returning the overplus, upon demand, to him the said* A. B. (*the reasonable charges of taking, keeping, and selling the said distress being first deducted*); *and if sufficient distress cannot be found of the goods and chattels of the said* A. B. *whereon to levy the said sum of* ———, *that then you certify the same to me, together with this warrant. Given under my hand and seal, the* ——— *day of* ———.

This to be varied according to the act, in each particular case.

C. D.

(a) This form is not given in the schedule to stat. 13 *G.* 3. *c.* 78.

No. XXXVII. Return of the Constable to be made upon the Warrant of Distress, when there are no Effects. *Vide ante*, p. 857. No. XXXVII.

I A.B., *constable of the parish, &c. of* ———, *in the county of* ———, *do hereby certify and make oath, that, by virtue of this warrant, I have made diligent search for the goods of the within named* ———, *and that I can find no sufficient goods whereon to levy the within sum of* ———. *As witness my hand, the* ——— *day of* ———. A. B.

Sworn before me the day and year, &c. C. D.

No. XXXVII. a. Summons for Nonpayment of Assessment. (*a*) *Vide* p. 854. No. XXXVII. a.

To A. O. of the ——— of ———, in the county of Stafford.

County of ——— to wit. } *WHEREAS complaint and information have been made upon oath before me, one of his majesty's justices of the peace for the said county, by the surveyor of the highways for the said* ———, *that by a rate or assessment duly made, allowed, and published, according to the statutes in that case made and provided, the sum of* ——— *was duly rated and assessed upon you, for and towards the amending, repairing, and supporting the highways within the said* ———, *and that you the said* A. O. *have refused and neglected to pay the same within ten days after demand thereof made, and have not yet paid the same: These are, therefore, to require you personally to appear before me (or such other of his majesty's justices of the peace as shall be present) at* ———, *in the said county, on* ——— *the* ——— *day of* ———, *at the hour of* ——— *in the* ——— *noon, there to answer to the said complaint and information, and to show cause why the said sum should not be levied on your goods and chattels pursuant to the said statute. Herein fail not. Given under my hand and seal, this* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* ———.

No. XXXVIII. Warrant of distress for Nonpayment of Money charged by an Assessment. *Vide* p. 854. No. XXXVIII.

Middlesex. { To the constable, headborough, or tithingman, of ———, in the said county.

WHEREAS, by an assessment made upon the occupiers of lands, tenements, woods, tithes, and hereditaments within the parish, &c. of ———, *in the said county, for the purposes of, &c.* [as stated in the justice's order,] *pursuant to an order of justices for that purpose, according to the directions of the act, passed in the thirteenth year of the reign of his majesty King* George *the third,* for the amendment and preservation of the highways," A. B. *was charged the sum of* ———, *as his share and proportion of the said assessment,*

(*a*) This form is not given in the schedule to stat. 13 *G.*3. *c.*78.

in respect of the lands, tenements, woods, tithes, and hereditaments, which he occupied within the said parish, &c.: And whereas it appears to me, upon the oath of ———, *that the said sum of* ——— *hath been duly demanded from the said* A. B., *and that he hath refused to pay the same for the space of ten days after such demand made: These are therefore, in his majesty's name, to command you to levy the said sum of* ———, *by distress of the goods and chattels of the said* A. B., *and if the same shall not be paid within the space of four days next after such distress by you taken, together with the reasonable charges of taking and keeping the same, that you do then sell the said goods and chattels so by you distrained; and out of the money arising by such sale, that you do pay unto* C. D., *the surveyor of the highways for the said parish, &c. of* ———, *the said sum of* ———, *to be employed for the purposes aforesaid; and that you do return the surplus thereof to the said* A. B., *the reasonable charges of taking, keeping, and selling the said distress being first deducted; and if sufficient distress cannot be found of the goods and chattels of the said* A. B. *whereon to levy the said sum of* ———, *that then you certify the same to me, together with this warrant. Given under my hand and seal, the* ——— *day of* ———.

No. XXXIX. **No. XXXIX. Commitment for Want of Distress.** *Vide ante*, p. 854. 857.

Middlesex. { To the constable of ———, in the said county, and to the keeper of the common gaol, [or, the house of correction] at ———, in the said county.

WHEREAS A. B. *of* ———, *in the said county, yeoman, was, on the* ——— *day of* ———, *convicted before me,* C. D. *esq., one of his majesty's justices of the peace in and for the said county, upon the oath of* E. F., *a credible witness, for that he, the said* A. B. [here set forth the offence], *contrary to the statute made in the thirteenth year of the reign of his majesty King* George *the third,* for the amendment and preservation of the highways, *by reason whereof the said* A. B. *hath forfeited the sum of* ———: *And whereas, on the* ——— *day of* ———, *in the year aforesaid, I did issue my warrant to the constable of* ——— *to levy the said sum of* ———, *by distress and sale of the goods and chattels of him the said* A. B., *and to distribute the same according to the directions of the said statute: And whereas it duly appears to me, upon the oath of the said constable, that the said constable hath used his best endeavours to levy the said sum on the goods and chattels of the said* A. B. *as aforesaid, but that no sufficient distress can be had whereon to levy the same: These are therefore to command you the said constable of* ——— *aforesaid to apprehend the said* A. B., *and him safely to convey to the common gaol* [or, *house of correction*] *at* ———, *in the said county, and there deliver him to the keeper thereof, together with this precept; and I do hereby also command you, the said keeper, to receive and keep in your custody the said* A. B. *for the space of three months, unless the said sum shall be sooner paid, pursuant to the said conviction and warrant; and for so doing this shall be your sufficient warrant. Given under my hand and seal, the* ——— *day of* ———, *in the year of our Lord* ———. C. D.

In the case of a commitment for the want of payment of money due by an assessment, it must be, *to receive, and keep in your custody, until he shall have paid the said sum of* ———, *and the further sum of* ———, *being the costs and charges occasioned by his neglect in paying the same.*

No. XL. Notice of Appeal to the Quarter Sessions. *Vide ante*, p. 858. No. XL.

A. B. *take notice, that I intend to appeal to the next general quarter sessions of the peace, to be holden for the county, &c. of* ———, *against an order,* [*conviction, or other proceeding,* as the case may be, particularly specifying the purport of such order, &c. and assigning the grievance, and cause of complaint].

Dated the —— *day of* ——. C. D.

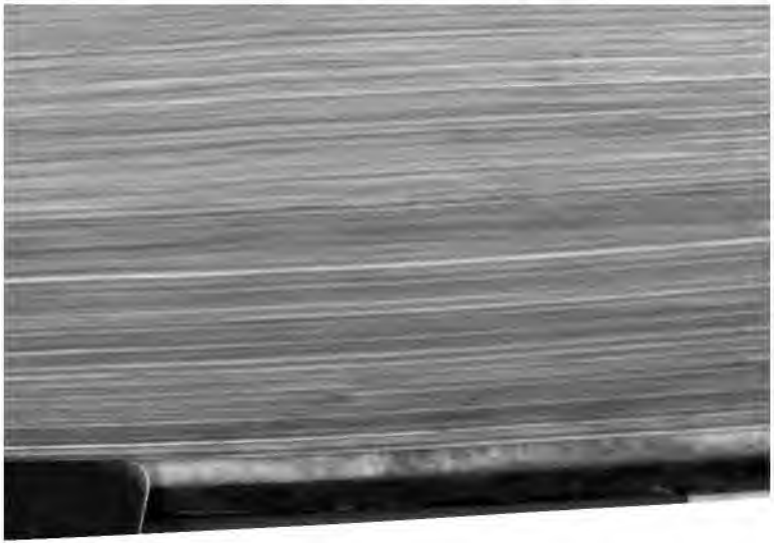
The following three forms, from No. XLI. to XLIII., are copied from stat. 34 *G.* 3. *c.* 64.

No. XLI. Information. *Vide* stat. 34 *G.* 3. *c.* 64. § 1. p. 795. No. XLI.

County of ———— } *AT a petty session, holden before* J. P. *and* K. P., *two of his majesty's justices of the peace for the said county, this* ——— *day of* ———, J. S., *one of the surveyors of the highways of the parish of* A., *came before the justices aforesaid, and gave them to be informed, that there is in the said county a certain common highway, leading from* M. *to* N.; *and that there is a certain part of the said highway, that is to say, so much thereof as lies between a certain place called* C. *and a certain other place called* D., *being in length* ——— [as the case may be], *one side of which last-mentioned part of the said highway adjoining to the parish of* A., *lies within the said parish of* A., *and is to be, and of right ought to be, repaired by the said parish of* A.; *and that the other side of the same part of the said highway, adjoining to the parish of* B., *lies within the parish of* B. *and is to be, and of right ought to be, repaired by the said parish of* B.; *and stating that the repair of such part of the said highway is very inconvenient to the parishes aforesaid, and the want thereof detrimental to the public; and therefore praying, that such part of the said highway may be allotted and apportioned for the repair thereof, by the justices aforesaid, to the said several parishes of* A. *and* B. *in the manner directed by an act passed in the thirty-fourth year of the reign of King* George *the third, intituled* An act, &c. See Plan.

(*Signed*) J. S.
One of the surveyors of the highways for the parish of A.

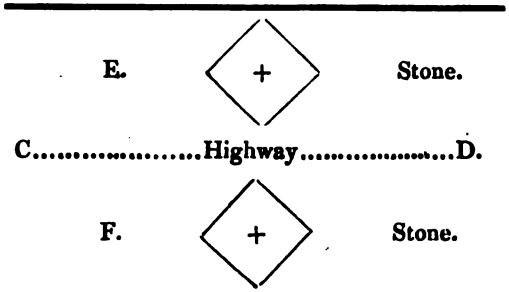
The above application was made to us the day and year first above written.
J. P.
K. P.



PLAN.

Parish of A.

Bound to repair on this side to the dotted line.



Parish of B.

Bound to repair on this side to the dotted line.

No. XLIV. Form of Precept to the High Constable for appointing a Special Sessions for Surveyors to make Returns as to the State of the Highways. Of Persons who have neglected to cut and prune their Hedges, Trees, &c. &c. *Vide ante*, 13 *G.* 3. *c.* 78. § 7. p. 822. and § 61. p. 787. No. XLIV.

County of ——— } To J. W. ——— high constable of the hundred of ———. } ——— in the said county of ———.

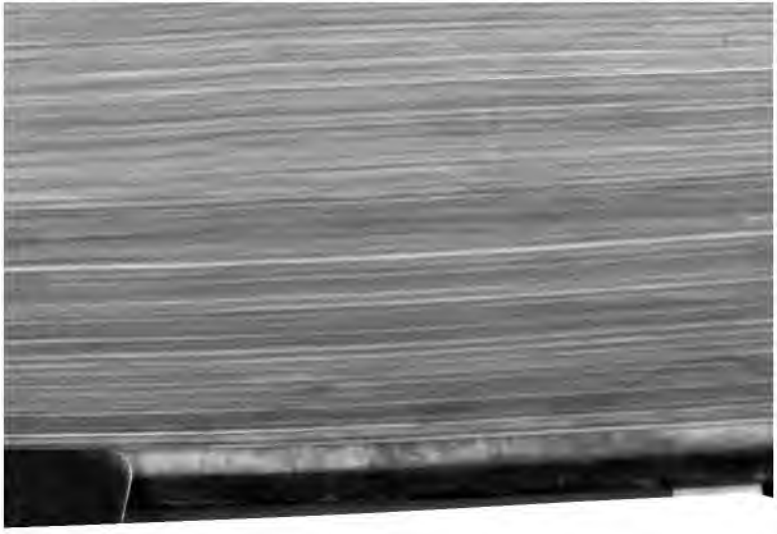
WE two of his majesty's justices of the peace for the said county, (one whereof is of the quorum,) do hereby require you immediately upon the receipt hereof, to issue your warrants to all the petty constables within your said hundred, in the form hereon endorsed. Given under our hands and seals, the —— day of ———, in the year of our Lord one thousand eight hundred and ———.

(*L. S.*)
(*L. S.*)

No. XLV. High Constable's Precept for a Special Sessions for Surveyors to make Return as to the State of the Highways, of Persons who have neglected, &c. *Vide ante*, p. 787. 822. No. XLV.

County of ———
Hundred of ——— } To the constable of the parish of ———.

BY virtue of a precept from two of his majesty's justices of the peace for the county of ———, acting within the said hundred, to me directed, you are hereby required to give notice to the surveyors of the highways within your said parish, that they are



No. XLVII. Order for Occupiers of Land to make Hedges, and cut down Trees. *Vide* stat. 13 G. 3. *c.* 78. § 7. p. 822. No. XLVII.

At a special sessions held at ——— in the hundred of ———, in the county of ———, on ———, the ——— day of ———, in the year of our Lord ———, by justices of the peace for the said county, acting within the said hundred.

——— } to wit. } *WHEREAS complaint hath been made unto us by* A. S., *surveyor of the highways of the parish of* ———, *that* A. O. *of the said parish hath had due notice from him to cut, prune, and plash his hedges adjoining, and to cut down or to prune and lop the trees growing in and near such hedges, in such manner that the highways may not be prejudiced by the shade thereof, and that the sun and wind might not be excluded therefrom to the damage thereof (pursuant to the statute made in the thirteenth year of the reign of his majesty King* George *the third), but that he hath not complied with such notice, or with the requisites of the said act.*

And whereas the said A. O., *having been duly summoned to answer the said complaint, hath made default in his appearance. Now we, upon duly considering the circumstances of the case, do order, that such hedges be cut, plashed, and pruned, so as not to exceed the height of ——— from the surface of the field, and that all such trees as grow in and near such hedges, in the grounds occupied by the said* A. O. *near the said highway, be cut down, or be pruned and lopt, so that the sun and wind may not be excluded from such highway; and we do further order, that in case the said* A. O. *shall not obey this order within ten days from the date hereof, that then* A. S. *the said surveyor do cut, prune, and plash such hedges, and cut down or prune and lop such trees, in manner directed by this order, and proceed against the said* A. O. *immediately afterwards for recovery of the penalties and charges he will thereby incur. Given under our hands and seals, the day and year first above written.*

No. XLVIII. Information of Surveyor of Highways against a Person for not pruning Hedges, &c. *Vide* stat. 13 G. 3. *c.* 78. § 7. p. 822. No. XLVIII.

County of ——— } *BE it remembered, that on the ——— day of ——— one thousand eight hundred and ———, the undersigned surveyor of the highways of the parish of ———, in the said county, informeth and maketh oath before me, one* [See 3 G. 4. *c.* 23. § 2. *tit.* Conviction, Vol. I.] *of his majesty's justices of the peace in and for the said county of ———, that* A. O. *of ———, in the said county, yeoman, having had due notice to cut, prune, and plash his hedges, cut, prune, or lop the trees, and open, cleanse, and scour his ditches and watercourses, within or adjoining to the public highways in the said first above-named parish, as well as to remove the soil or earth dug out thereof, hath neglected to do the same within the time limited by law and required by such notice, contrary to the statute made in the thirteenth year of the reign of his majesty King* George



such notice, neglected, refused, and made default in opening, cleansing, and scouring the said ditch or drain adjoining to the said highway in the said parish of ———, *whereby he hath forfeited the sum of ten shillings. These are, therefore, in his said majesty's name, to command you to levy the said sum of ten shillings by distress of the goods of him the said* A. O.; *and if within the space of five days next after such distress by you taken, the said sum of ten shillings, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods so by you distrained, and out of the money arising by such sale, that you do pay the said sum of ten shillings to him the said surveyor, to be employed in such manner as the statute in that case directs, returning to him the said* A. O. *the overplus upon demand. Given under my hand and seal this* ——— *day of* ———, *in the year of our Lord* ———.

G. C. (*L. S.*)

No. LI. Information of a Surveyor of Highways, for the Purpose of obtaining an Order for a Composition instead of Statute Duty in kind, pursuant to stat. 54 *G.* 3. *c.* 109. § 4. *Vide ante*, p. 806. No. LI.

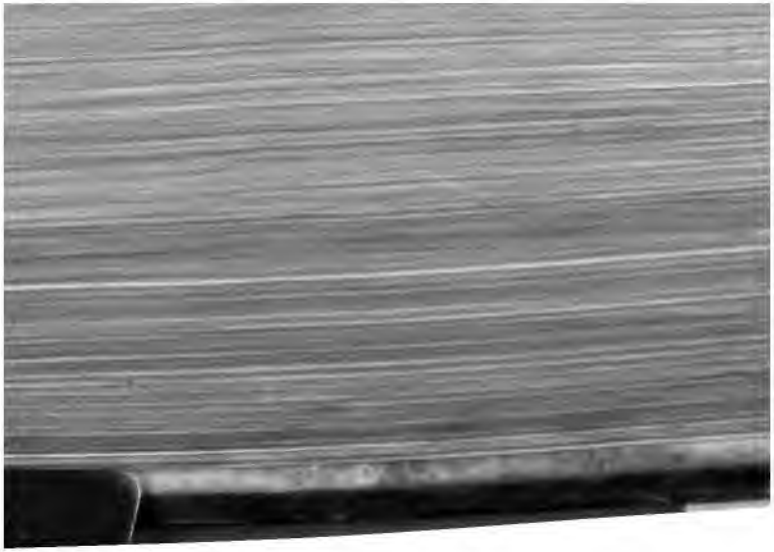
County of } *BE it remembered, that on the* ——— *day of* ———, *in the year of our Lord* ———, *at a special sessions, held at* ———, *in the hundred of* ———, *in the said county, by justices of the peace for the said county, acting within the said hundred;* ———, *surveyor of the highways within the parish of* ———, *in the said hundred of* ——— *and county aforesaid, maketh oath, that the maintenance and repairs of the highways, lying within the said parish, can be more effectually carried on by a composition in money, than by a performance of the statute duty, from the several persons who are bound by law to perform statute duty on the highways within the said parish: Wherefore the said surveyor prayeth the consideration and order of us the said justices in the premises, according to the form of the statute in such case made and provided.*

Exhibited before us, on oath, the day and year above written. } { *Surveyor of the highways.*

No. LII. Order of two Justices to enable Surveyors to receive a Composition in Money instead of Performance of Statute Duty in kind, pursuant to stat. 54 *G.* 3. *c.* 109. § 4. *Ante*, p. 806. No. LII.

County of } At a special sessions, held at ———, in the hundred of ———, in the said county, the —— day of ———, in the year ———, by justices of the peace for the said county, acting within the said hundred.

WHEREAS it hath been made appear unto us J. P. *and* K. P. *esquires, two of his majesty's justices of the peace for the said county, acting within the said hundred, upon the oath of* A. S. *sur-*



No. LIV. Warrant to apprehend the Driver of a Waggon, Cart, &c. for Misbehaviour. *Vide* stat. 13 *G.* 3. *c.* 78. § 60. p. 827. No. LIV.

County of ——— } To all constables and other his majesty's officers of
to wit. } the peace for the said county.

THESE are, in his majesty's name, to command you and every of you, upon sight hereof, to take and bring before me, or some other of his majesty's justices of the peace for the said county, the body of A. D. *the driver of a certain* ——— *belonging to* ———, *of* ———, *in the said county* ———, *to answer to all such matters and things as on his majesty's behalf are on oath objected against him by* ——— *for riding upon a certain carriage called a* ——— *in a public highway in the said county, he the said* A. D. *not having some other person on foot or on horseback to guide the same, and which said carriage was not then conducted by some person holding the reins of the horses drawing the same. Hereof fail not at your peril. Given under my hand and seal this* ——— *day of* ———, *and in the year of our Lord* ———.

No. LV. Order for Payment of a Forfeiture for Riding on a Waggon, &c. *Vide* stat. 13 *G.* 3. *c.* 78. § 60. p. 827. No. LV.

County of ——— } *WHEREAS* A. O. *of* ———, *in the said county, labourer, is duly convicted before me* J. P. *esquire, one of his majesty's justices of the peace in and for the said county, upon the oath of* A. W. *a credible witness,* [or as the case may be,] *for that he the said* A. O., *on the* ——— *day of* ——— *instant, in the king's highway, lying between* N. *and* O. *within the parish of* P. *in the said county of* ———, *did ride upon the cart* [or as the case may be,] *of his master* L. M. *of* ———, *in the county of* ———, *not having some other person on foot, or on horseback, to guide the same, nor holding any reins in his hand to guide the horses drawing the same, whereby he the said* A. O. *hath forfeited the sum of ten shillings. I do, therefore, hereby order the said* A. O. *to pay to* S. H., *surveyor of the highways of the parish of* ——— *aforesaid, the said sum of ten shillings, to be by him disposed of as the law directs. Given under my hand and seal, the* ——— *day of* ———, *in the year of our Lord* ———.

No. LVI. Conviction on stat. 13 *G.* 3. *c.* 78. § 48., of a Surveyor of Highways, for not delivering over his Books of Account to the Churchwardens and Overseers. *Vide* stat. 13 *G.* 3. *c.* 78. § 48. p. 848. No. LVI.

From Paley [64.]

County of ——— } *BE it remembered, that on the* ——— *day of* ———, *in the year of our Lord* ———, *at* ———, *in the county of* ———, J. S. *came before me* W. H., *one of his majesty's justices of the peace in the said county, and informed me that* W. B., *of the hamlet or division of* B., *in the township of* C., *in the said*

county, labourer, was surveyor of the highways within the said hamlet, for the year ending at Michaelmas *last past, and that afterwards, to wit, on the ——— day of ——— now last past, at* O., *in the county aforesaid, a certain book of accounts of the said* W. B. *as such surveyor, and certain assessments for repairs of the said highways, were settled and allowed by* J. H. *clerk, and* J. W. *esquire, two of his majesty's justices of the peace in and for the said county, pursuant to the statute in such case made and provided; and that afterwards, to wit, from thenceforth to the time of exhibiting the said information and complaint, there was a churchwarden and overseer of the poor duly appointed in and for the township of C. aforesaid, including the said hamlet or division, and that the said* W. B. *during all the time last aforesaid, neglected to transmit and deliver to such churchwarden and overseers, or any or either of them, the said book and assessments so settled and allowed as aforesaid, contrary to the form of the statute in such case made and provided* (a): *Whereupon the said* W. B., *after being duly summoned to answer the said charge, appeared before me on the ——— day of ———, at ———, in the said county, and having heard the charge contained in the said information, declared that he was not guilty of the said offence; but the same being fully proved upon the oaths of* J. S. *and* R. B., *two credible witnesses, it manifestly appears to me the said justice, that he the said* W. B. *is guilty of the offence charged upon him by the said information. It is therefore considered and adjudged by me the said justice that the said* W. B. *be convicted, and I do hereby convict him of the offence aforesaid, and I do hereby declare and adjudge, that he the said* W. B. *has forfeited the sum of 5l. of lawful money of* Great Britain, *for the offence aforesaid, to be distributed as the law directs, according to the form of the statute in that case made and provided. Given under my hand and seal the day and year last aforesaid.*

(a) What follows to the end is pursuant to the schedule XXXV. annexed to the act.

If the party does not appear upon the summons, then after the words "*being duly summoned to answer the said charge,*" insert ("*did not appear before me pursuant to the said summons,*" or if he appeared and refused to make defence, (*did neglect and refuse to make any defence against the said charge, but the same being fully proved, &c. as before.*)

If the party confesses, after the words "*contained in the said information,*" insert ("*acknowledged and voluntarily confessed the same to be true, and it manifestly appears to me the said justice, as above.*")

No. LVII.

No. LVII. Information upon Oath by the Surveyors of the Highways of a Parish where private Persons are liable to repair, that due notice had been given them of the Order of two Justices made on them for such Repair at a Special Sessions, and that such Repairs, notwithstanding, have not been made within the time as limited, in order that the Magistrates, or one of them, may present such Highways, &c. *Vide* stat. 13 *G.* 3. *c.* 78. § 23. p. 803.

County of ———} *WHEREAS information was made unto* J. P. *and* K. P. *esquires, two of his majesty's justices of the peace in and for the said county, by* S. H., *one of the surveyors of*

the highways of the parish of ——— *in the said county, at a special sessions held at* ———, *in and for the hundred of* ——— *in the said county, on the* ——— *day of* ——— *last, that the public streets, causeways, pavements, and highways of* ———, *a town in the said parish of* ———, *in the county aforesaid, were very ruinous, broken, and in great decay, and that the several occupiers of houses in the said town of* ——— *were used, and had been immemorially accustomed, and ought to repair the same, each severally before his own premises. And whereas, in pursuance of an act passed in the thirteenth year of King* George *the third, intituled* An act to explain, amend, and reduce into one act of parliament, the statutes now in being for the amendment and preservation of the public highways within that part of *Great Britain* called *England*; and for other purposes, *the said two justices did then and there make an order* (a) *under their hands and seals, bearing date the* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* ———, *directing the several persons hereinafter mentioned (among others) to repair their said streets, causeways, pavements, and highways respectively so out of repair in the said town and parish, on or before the* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* ———. *The said* S. H. *and* T. H., *the other surveyors of the highways of the said parish of* ———, *respectively make oath, that they, the said surveyors of the highways of the said parish, did give due notice of the said order to the several persons therein named; that some of the said persons have observed and obeyed the same; but that, on an examination and inspection this morning, they find the streets, causeways, pavements, and highways of the following persons, in the said town of* ———, *and parish highways aforesaid, still unrepaired, and therefore they pray that the said streets, causeways, pavements, and highways so out of repair, together with the persons liable to repair the same, may be severally and respectively presented by some one of his majesty's justices of the peace at the next general quarter sessions of the peace for the said county of* ———, *pursuant to the statute in that case made and provided.*

(a) See form XXIX. *ante*, p. 873.

Persons liable to repair.	LENGTH. Ft.	In.	BREADTH. Ft.	In.
W. B. - - - - - -	102	0	— 9	0
W. P. *esquire* - - - - -	190	0	— 10	0
James B. - - - - -	128	0	— 5	0
John B. (*bounded on the north by lands of* W. P. *esquire, but occupied by* James B., *and on the south by those of the Rev.* J. W. *occupied by* W. J.)	145	0	— 10	0
The same John B. (*bounded on the north by lands occupied by* L. T., *and on the south by lands occupied by* E. J.)	24	0	— 8	0
The same John B. (*bounded on the north by lands occupied by* W. A., *on the south by lands occupied by* S. A. *and on the west side by* L. T.)	32	0	— 4	6

And the said S. H. *and* T. H. *further depose, that the several parts or portions of the streets so out of repair belonging to the said*



lord the king and of his predecessors, with their hors
and carriages, to go, return, pass, ride, and labour
pleasure, and that a certain part of the same king's
situate, lying, and being in the parish of ———
——— *aforesaid, beginning at the place called*
continued towards the market town of ——— *a*
length of ——— *feet, and being of the breadth*
on the ——— *day of* ———, *in the* ———
of ———, *and continually afterwards until the*
of this inquisition, was and yet is in great decay, fo
reparation and amendment of the same; so that t
said lord the king passing and travelling through t
horses, coaches, carts, and carriages could not duri
said, nor yet can go, return, pass, ride, and labo
danger: to the great damage and common nuisan
subjects of our said lord the king passing throu
against the peace of our said lord the king, his cro
and that the inhabitants of the said parish of —
county of ——— *the common highway aforesa*
being in decay) ought to repair and amend, when
shall be necessary.

Or, that A. O. *of* ——— *aforesaid, gentlema*
of the tenure of his lands and tenements, situate, l
——— *aforesaid, in the county aforesaid, to rep*
said highway, when and so often as it shall be nece

No. LIX.

No. LIX. Indictment for not repairing an an Footway. *Vide ante*, p. 851.

County of } *THE jurors for our lord the king*

——— of ———, *in the county of* ——— *aforesaid, of the length of* ——— *feet, and the breadth of* ——— *feet, on the* ——— *day of* ———, *in the* ——— *year of the reign of* ———, *and continually afterwards until the day of taking this inquisition, at the parish of* ——— *aforesaid, in the county aforesaid, was and yet is very ruinous, miry, deep, broken, and in such decay, for want of due reparation and amendment of the same, that the liege subjects of our said lord the king by and through the same way with their horses and cattle could not, during the time aforesaid, nor yet can go, return, pass, ride, and labour as they ought and were wont to do, without great danger of themselves and of their goods, to the great damage and common nuisance of all the liege subjects of our said lord the king, through the same highway going, returning, passing, riding, and labouring, and against the peace of our said lord the king; and that the inhabitants of the same parish of* ——— *in the county aforesaid, the same common highway so as aforesaid being in decay, ought to repair and amend, when and so often as it shall be necessary.*

Indictment for encroaching upon a Highway, by building thereupon. *Vide ante*, p. 851.

——— } to wit. } *THE jurors for our lord the king upon their oath present, that* A. O. *late of* ———, *carpenter, the* ——— *day of* ———, *in the* ——— *year of the reign of* ———, *with force and arms, at* ———, *in and upon a common highway, in a certain place, commonly called* ———, *there leading from* ——— *to* ———, *by a certain building there, containing in length* ——— *feet, and in breadth* ——— *feet, by him the said* A. O. *erected and built, hath unlawfully and unjustly encroached, and doth yet encroach, and the building aforesaid, so as is aforesaid erected and built by him the said* A. O. *from the aforesaid* ——— *day of* ——— *in the year aforesaid unto the day of exhibiting this information, at* ——— *aforesaid, in the county aforesaid, with force and arms, unlawfully and unjustly hath continued, and doth continue, by reason whereof the common highway aforesaid hath become and is greatly straitened, so that the liege subjects of the said lord the king upon and through the same common highway aforesaid, with their horses, carts, and carriages, cannot go, pass, ride, and labour as they ought and were wont to do, to the great and common nuisance of all the liege subjects of the said lord the king in and through the said common highway going, passing, riding, and labouring, and against the peace of our said lord the king.* Trem. 196. (*a*)

Indictment for enclosing the Highway. *Vide ante*, p. 851.

——— } to wit. } *THE jurors for our said lord the king upon their oath present, that whereas from the time whereof the memory of man is not to the contrary, the liege subjects of our said lord the king had and lawfully used a certain common highway at* ———, *in the said county, in a certain place there called* ———, *leading from the town of* ——— *aforesaid, to the town of* ———,

(*a*) Indictment for not repairing a house standing on the highway, ruinous and like to fall down. See Ld. *Raym. Entries*, 25. *Reg.* v. *Watts*, 2 Ld. *Raym.* 856. 1 *Salk.* 357.

for themselves and their goods, without any stoppage or hinderance by any ditches, hedges, or other obstacles whatsoever; nevertheless, one A. O. *of* ——— *aforesaid, in the county of* ——— *aforesaid, yeoman, on the* ——— *day of* ———, *in the* ——— *year of the reign of* ———, *with force and arms, at* ——— *aforesaid, in the county of* ——— *aforesaid, in the place aforesaid, called* ———, *upon the common highway aforesaid, a certain ditch and quickset hedge did make, and the said ditch and quickset hedge so as aforesaid made, doth yet continue and keep; to the great stoppage and hinderance of the liege subjects of our said lord the king passing in and through the said common highway, and against the peace of our said lord the king.*

Indictment for laying Timber or other Obstructions in the Highway. *Vide ante*, p. 851.

——— } to wit. } *THE jurors for our lord the king upon their oath present, that* A. O., *late of* ———, *in the county aforesaid, yeoman, on the* ——— *day of* ———, *in the* ——— *year of the reign of* ———, *and on divers other days and times, as well before as afterwards, with force and arms, at* ———, *in the said county, in and upon the king's common highway there, leading from* ——— *unto the town of* ———, *divers great pieces of timber, put and placed, and caused to be put and placed, and the same great pieces of timber so as aforesaid put and placed, from the aforesaid* ——— *day of* ———, *in the* ——— *year aforesaid, until the day of exhibiting this information in and upon the king's common highway aforesaid, to be, lie, and remain, hath permitted, and doth still permit, to the grievous and common nuisance of all the lieges and subjects of the said lord the king, upon and through the king's common highway aforesaid, going, passing, riding, and travelling, and against the peace of our said lord the king, his crown, and dignity.*

Trem. 197. Or, ——— *great quantity of dung and other filth, by reason whereof divers hurtful and unwholesome smells from the said dung and other filth did then and there arise, and thereby the air there became, was and is corrupted and infected* ———.

Or, ——— *cart loads of rubbish* ———, *by reason whereof the said highway for the whole time aforesaid was straitened and obstructed, so that the liege subjects of our said lord the king could not so freely pass and repass about their lawful business, through the said common highway there, as they ought and have been accustomed* ———.

Indictment for stopping up a Watercourse, whereby the Highway is overflowed. *Vide ante*, p. 851.

——— } to wit. } *THE jurors for our lord the king upon their oath present, that* A. O. *late of the parish of* ———, *in the county aforesaid, yeoman, on the* ——— *day of* ———, *in the* ——— *year of the reign of* ———, *with force and arms, at the parish aforesaid, in the county aforesaid, a certain ancient watercourse adjoining to the king's common highway, within the said parish, leading from the town of* ———, *in the county aforesaid, towards and unto* ———, *with gravel and other materials unlawfully and injuriously did obstruct and stop up; and the said watercourse, so as aforesaid obstructed and stopped up from the said*

——— *day of* ———, *in the year aforesaid until the day of the taking of this inquisition at the parish aforesaid, in the county aforesaid, unlawfully and injuriously hath continued and still doth continue, by reason whereof the rain and waters that were wont and ought to flow and pass through the said watercourse on the same day and year, and divers other days and times afterwards, between that day and the day of the taking of this inquisition, did overflow and remain in the king's common highway aforesaid, and thereby the same was and yet is greatly hurt and spoiled; so that the liege subjects of our said lord the king through the same way with their horses, coaches, carts, and carriages, then and on the said other days and times, could not nor yet can go, return, pass, ride, and labour as they ought and were wont to do, to the great damage and common nuisance of all the liege subjects of our said lord the king, through the same highway going, returning, passing, riding, and labouring, and against the peace of our said lord the king.*

No. LX. Certificate of two Justices, that an indicted Road is in good repair. (*a*) *Vide ante*, p. 851. No. LX.

———— } *WE two of his majesty's justices of the peace of the*
to wit. } *county of* ———, *acting in and for the said county, do hereby certify that we have this day viewed and surveyed a certain part of a common and ancient king's highway leading* [here describe the road], *indicted at the last* ——— *assizes,* [or, *at the last general quarter sessions of the peace*] *for the said county, and that the said part of the said highway so indicted as aforesaid, is now in good and sufficient repair, and likely so to continue. Given under our hands and seals this* ——— *day of* ——.

J. P. (*L. S.*)
K. P. (*L. S.*)

Highways, Turnpike.

[3 G. 4. c. 126. — 4 G. 4. c. 16. c. 35. c. 95. — 5 G. 4. c. 69. — 7 & 8 G. 4. c. 24. — 9 G. 4. c. 77.]

By stat. 3 *G.* 4. *c.* 126., intituled *An act to amend the general laws now in being for regulating Turnpike Roads in that part of* Great Britain *called* England; (passed 6th *August*, 1822). 3 G. 4. c. 126.

§ 1. It is enacted, that from and after the 1st day of *January*, 1823, the following acts, *viz.*

13 *G.* 3. *c.* 84.	18 *G.* 3. *c.* 28.
14 *G.* 3. *c.* 14.	18 *G.* 3. *c.* 63.
14 *G.* 3. *c.* 36.	21 *G.* 3. *c.* 20.
14 *G.* 3. *c.* 57.	25 *G.* 3. *c.* 57.
14 *G.* 3. *c.* 82.	52 *G.* 3. *c.* 145.
16 *G.* 3. *c.* 39.	53 *G.* 3. *c.* 82.
16 *G.* 3. *c.* 44.	55 *G.* 3. *c.* 119.
17 *G.* 3. *c.* 16.	57 *G.* 3. *c.* 37.

shall be and the same are hereby repealed.

(*a*) A certificate of justices, certifying that a highway, which is the subject of an indictment, is in a state of repair, is admitted, in common practice, as an adjudication of the state of repair, after a plea of guilty pleaded by the parish. *Rex* v. *Sir Joseph Mawbey, Bart. and others*, 6 *T. R.* 630. 635. 1 *Phill. Ev.* 6th *Ed.* 362.



XIII. *Exemptions from Tolls.*
[3 G. 4. c. 126. — 4 G. 4. c. 16. — 4 G. 4. c. 95.]

XIV. *Tolls to be paid upon Carriages affixed to others, and for Oxen.*
[3 G. 4. c. 126.]

XV. *Tables of Tolls to be put up at Turnpike Gates.— — Recovery of Tolls. — Penalty for evading.*
[3 G. 4. c. 126. — 4 G. 4. c. 95. — 9 G. 4. c. 77.]

XVI. *Composition for Tolls — Reduction or Advance.*
[3 G. 4. c. 126. — 4 G. 4. c. 95.]

XVII. *Erecting Toll Gates.*
[3 G. 4. c. 126. — 7 & 8 G. 4. c. 24. — 9 G. 4. c. 77.]

XVIII. *Farming the Tolls.*
[3 G. 4. c. 126. — 4 G. 4. c. 95.]

XIX. *Property of Toll-houses vested in Trustees.*
[3 G. 4. c. 126. — 4 G. 4. c. 95.]

XX. *Statute Duty, and other Labour.*
[3 G. 4. c. 126. — 4 G. 4. c. 95.]

XXI. *Apportionment of Fine on Indictment for non-repair.*
[3 G. 4. c. 126.]

XXII. *Causeways — Ditches — Drains.*
[3 G. 4. c. 126. — 4 G. 4. c. 95.]

XXIII. *Annoyances to be removed.*
[3 G. 4. c. 126. — 4 G. 4. c. 95.]

XXIV. *Branches of Trees and Hedges to be cut, &c.*
[3 G. 4. c. 126.]

XXV. *Milestones, &c. to be erected.*
[3 G. 4. c. 126.]

XXVI. *Watering Roads, and what shall be deemed the Centre.*
[3 G. 4. c. 126.]

XXVII. *Nuisances — Gates — Windmills.*
[3 G. 4. c. 126. — 4 G. 4. c. 95.]

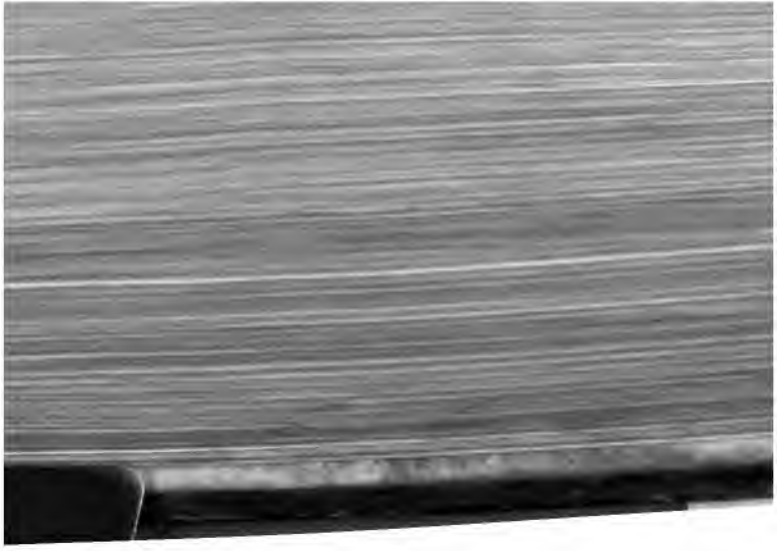
XXVIII. *Cattle straying may be impounded.*
[3 G. 4. c. 126. — 4 G. 4. c. 95.]

XXIX. *Skid-pans to be used.*
[3 G. 4. c. 126.]

XXX. *Destroying Turnpike Gates, and doing other Damage. — Resisting the Execution of this Act.*
[3 G. 4. c. 126. — 7 & 8 G. 4. c. 24. — c. 27. — c. 30.]

XXXI. *Carriages to be marked.*
[4 G. 4. c. 95.]

XXXII. *Regulations respecting Drivers of Carriages.*
[3 G. 4. c. 126. — 4 G. 4. c. 95.]



acts (*a*) of the third, fourth, and seventh and eighth years of the reign of his present majesty, (save and except such parts thereof respectively as are varied, altered, or repealed,) shall extend and be construed to extend to this act; and all the powers, authorities, clauses, penalties, forfeitures, matters, and things contained in the said acts of the third, fourth, and seventh and eighth years of the reign of his present majesty, (except such parts thereof respectively as are varied, altered, or repealed,) and all the powers, authorities, clauses, provisions, penalties, matters, and things contained in this act, shall extend and be construed to extend to every local turnpike act, and shall be applied and put in execution as fully and effectually, to all intents and purposes, as if the same were repeated and re-enacted in the body of such local turnpike act, and were made part thereof; and the said recited acts and this act shall not be recited in any such local turnpike act, save and except as to such powers, authorities, clauses, provisions, penalties, matters, and things as shall be expressly referred to for the purpose of being varied, altered, or repealed by any such local turnpike act.

9 G.4. c.77. — mer acts extended to this act. — Powers of this act to extend to all local turnpike acts. — Acts not to be recited unless for the purpose of being altered.

II. Qualification of, and who shall be Trustees and Commissioners.

[3 G. 4. c. 126. § 61, 62, 63, 64, 65, 66. — 4 G. 4. c. 95. § 32, 33, 34, 35, 36, 37. — 5 G. 4. c. 69. — 7 & 8 G. 4. c. 24.]

By stat. 3 *G.* 4. *c.* 126. § 61. It is enacted, that all H. M.'s justices of the peace for the time being acting for the county or counties through which any turnpike road now does or hereafter shall pass, shall be added to and joined with the trustees or commissioners for making, repairing, or maintaining every such turnpike road, and shall, on qualifying themselves as hereafter mentioned, have all the same powers and authorities, to all intents and purposes, as if the said justices had severally been named or elected trustees or commissioners in or under any act or acts of parliament under which such roads shall be made, repaired, or maintained.

3 G.4. c.126. Justices of peace to be trustees.

But by stat. 4 *G.* 4. *c.* 95. § 34. Nothing in stat. 3 *G.* 4. *c.* 126. or in this or any other act contained, shall extend or be construed to extend so as to require any justice of the peace acting for any county to take or subscribe any oath of qualification before he shall act as trustee in the execution of any act or acts for making, repairing, or maintaining any turnpike road.

4 G.4. c.95. Not to extend to magistrates taking oath of qualification as trustees.

And by stat. 5 *G.* 4. *c.* 69. After reciting the titles of stats. 3 *G.* 4. *c.* 126. — 4 *G.* 4. *c.* 95. and § 61. of stat. 3 *G.* 4. *c.* 126. *supra*); and that it is expedient that H. M.'s justices of the peace acting for any riding, division, or soke, should also be enabled to act as trustees for the repair of turnpike roads: it is enacted, that from and after the passing of this act, 17th *June*, 1824, all H. M.'s justices of the peace for the time being, acting for the county or counties, riding or ridings, division or divisions, soke or sokes, through any part of which any turnpike road now does or hereafter shall pass, shall have such and the like powers

5 G.4. c.69. Justices acting for ridings or divisions, &c. through which roads pass shall have the like powers for making and repairing turnpike roads as justices for counties.

(*a*) 3 *G.*4. *c.*126. — 4 *G.*4. *c.*95. — 7 & 8 *G.*4. *c.*24.

5 G. 4. c. 69. and authorities for the making and repairing any such turnpike road, and be subject to the same rules and regulations, by virtue of or under the said recited acts, as any of H. M.'s justices of the peace acting for any county or counties.

3 G. 4. c. 126. By stat. 3 *G.* 4. *c.* 126. § 62. No person who shall hereafter be chosen or appointed a trustee or commissioner, shall be qualified or capable of becoming and acting as a trustee or commissioner in the execution of any act for making, repairing, or maintaining any turnpike road, unless he shall be in his own right, or in the right of his wife, in the actual possession or receipt of the rents and profits of freehold or copyhold lands, tenements, or hereditaments, of the clear yearly value of 100*l.* above reprizes, or shall be heir apparent of a person possessed of freehold or copyhold lands, tenements, or hereditaments, of the clear yearly value of 200*l.* above reprizes; and unless he shall, before he shall act as such trustee or commissioner, take and subscribe the oath or affirmation following, before any two or more of the trustees or commissioners appointed or to be appointed by or in pursuance of such act, who are hereby authorised and empowered to administer the same, in the words or to the effect following; (that is to say,)

I ———, *do swear* [or, being of the people called Quakers, *do solemnly affirm,*] *that I truly and* bonâ fide *am, in my own right* [or, *in the right of my wife*], *in the actual possession and enjoyment of* [or, *in the receipt of rents and profits issuing out of*] *freehold or copyhold lands, tenements, or hereditaments, of the clear yearly value of one hundred pounds above reprizes,* [or, *an heir apparent of* ———, *who to the best of my knowledge is seised of freehold or copyhold lands, tenements, or hereditaments, of the clear yearly value of two hundred pounds above reprizes,*] [or, *that I am possessed of a personal estate of ten thousand pounds, clear of all debts and incumbrances,* as the case may be.] *So help me* GOD.

[Or, being a Quaker, omit the words '*So help me God.*']

Qualification by personal property within 10 miles of London. § 63. "Nothing herein contained shall prevent any person from acting as a trustee or commissioner of any turnpike roads, any part of which are or shall be situate within ten miles of the *Royal Exchange in London*, who shall be possessed of personal property to the amount or value of 10,000*l.*, after payment of his debts."

4 G. 4. c. 95. Trustees to be sworn. By stat. 4 *G.* 4. *c.* 95. § 32. No person who shall after the passing of this act be chosen a trustee or a commissioner by or under any act or acts for making or maintaining any turnpike road, shall act as such trustee or commissioner, unless he shall, before he shall act as such (except in administering the oath or affirmation hereinafter mentioned), take and subscribe before one or more of the said trustees or commissioners (who is and are hereby empowered to administer the same) the oath or affirmation following; (that is to say,)

Oath. *I* A. B. *do swear,* [or, being one of the people called Quakers, *do solemnly affirm,*] *that I will truly and impartially, according to the best of my judgment, execute and perform the several powers, authorities, and trusts reposed in me as a trustee* [or, *commissioner*] *by virtue of an act passed in the third year of the reign of his majesty King* George *the fourth, intituled* An act to amend the general laws now in being for regulating turnpike roads in this

part of *Great Britain* called *England: and also an act passed in the fourth year of the reign of his said majesty, intituled* [here set forth the title of this act (*a*);] *and also an act passed in the ——— year of the reign of his majesty ———, intituled* [here set forth the title of the act under which such trustee or commissioner shall claim to act.] *So help me GOD.* 4 G. 4. c. 95.

[Or, being a Quaker, omit the words '*So help me God.*']

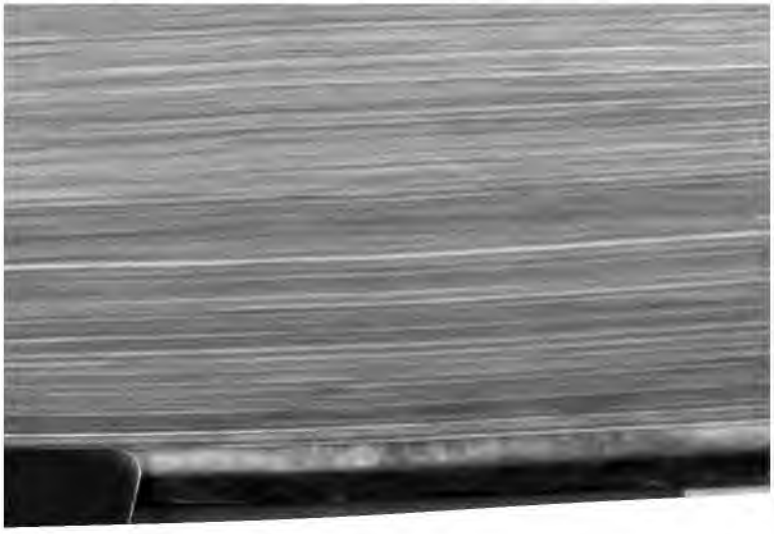
And if any such person shall act (except as aforesaid) before he shall have taken and subscribed the said oath or affirmation, every such person shall for every such offence forfeit the sum of 50*l.* with full costs of suit, to any person who shall inform or sue for the same in any of H. M.'s courts of record at *Westminster*, by action of debt, &c.: Provided always, that no act or proceeding, which shall be done or performed by any such person who shall have omitted or neglected to take and subscribe the said oath or affirmation by this act prescribed, shall be hereby impeached or rendered nugatory; but all such proceedings shall be as valid and effectual as if such person had taken such oath or affirmation previously to his having acted as such trustee or commissioner as aforesaid. Penalty, 50*l.* Proceedings valid, though oath omitted to be taken under recited act.

§ 33. If any person being a quaker shall have been or shall hereafter be appointed, by or under any act or acts of parliament for making, repairing, or maintaining any turnpike road, a trustee or commissioner of such road, and shall be in other respects qualified according to the provisions of stat. 3 *G.* 4. *c.* 126., it shall be lawful for such person, on taking and subscribing the affirmation in the said act and this act, to act as a trustee or commissioner, without being subject or liable to any penalty or forfeiture by such act or acts imposed for acting, not having taken and subscribed the oaths herein contained. Quakers making affirmation, may act as trustees.

§ 35. It is declared and enacted, that where any person shall, previously to the 1st day of *January*, 1823, have been duly qualified according to the provisions of, and taken the oath prescribed in that behalf by stat. 13 *G.* 3. *c.* 84.; or have been duly qualified according to the provisions of, and taken the oath prescribed by any other act or acts of parliament for making, maintaining, or repairing any particular turnpike road, previously to the said 1st day of *January*, and shall have been then acting as a trustee or commissioner in the execution of such act or acts, it shall and may be lawful for such person to continue to act as a trustee or commissioner under such act or acts, without requalifying, or taking the oath prescribed in and by the said recited act of the 3 *G.* 4. *c.* 126.; and although such person may not be possessed of freehold or copyhold lands, tenements, or hereditaments, or be heir apparent to any person possessing the same, to the amount required by the said act. Explaining trustees' qualification.

§ 36. Provided always, that if any trustee or commissioner who shall have been acting as such previously to the said 1st day of *January*, 1823, shall have lost or parted with subsequently thereto, Trustee losing his qualification to become incapable of acting.

(*a*) "An act to explain and amend an act, passed in the third year of the reign of his present majesty, to amend the general laws now in being for regulating turnpike roads in that part of *Great Britain* called *England*."



part of *Great Britain* called *England: and also an act passed in the fourth year of the reign of his said majesty, intituled* [here set forth the title of this act (*a*);] *and also an act passed in the ——— year of the reign of his majesty ———, intituled* [here set forth the title of the act under which such trustee or commissioner shall claim to act.] *So help me GOD.* 4 G. 4. c. 95.

[Or, being a Quaker, omit the words '*So help me God.*']

And if any such person shall act (except as aforesaid) before he shall have taken and subscribed the said oath or affirmation, every such person shall for every such offence forfeit the sum of 50*l.* with full costs of suit, to any person who shall inform or sue for the same in any of H. M.'s courts of record at *Westminster*, by action of debt, &c.: Provided always, that no act or proceeding, which shall be done or performed by any such person who shall have omitted or neglected to take and subscribe the said oath or affirmation by this act prescribed, shall be hereby impeached or rendered nugatory; but all such proceedings shall be as valid and effectual as if such person had taken such oath or affirmation previously to his having acted as such trustee or commissioner as aforesaid. Penalty, 50*l.* Proceedings valid, though oath omitted to be taken under recited act.

§ 33. If any person being a quaker shall have been or shall hereafter be appointed, by or under any act or acts of parliament for making, repairing, or maintaining any turnpike road, a trustee or commissioner of such road, and shall be in other respects qualified according to the provisions of stat. 3 *G.* 4. *c.* 126., it shall be lawful for such person, on taking and subscribing the affirmation in the said act and this act, to act as a trustee or commissioner, without being subject or liable to any penalty or forfeiture by such act or acts imposed for acting, not having taken and subscribed the oaths therein contained. Quakers making affirmation, may act as trustees.

§ 35. It is declared and enacted, that where any person shall, previously to the 1st day of *January*, 1823, have been duly qualified according to the provisions of, and taken the oath prescribed in that behalf by stat. 13 *G.* 3. *c.* 84.; or have been duly qualified according to the provisions of, and taken the oath prescribed by any other act or acts of parliament for making, maintaining, or repairing any particular turnpike road, previously to the said 1st day of *January*, and shall have been then acting as a trustee or commissioner in the execution of such act or acts, it shall and may be lawful for such person to continue to act as a trustee or commissioner under such act or acts, without requalifying, or taking the oath prescribed in and by the said recited act of the 3 *G.* 4. *c.* 126.; and although such person may not be possessed of freehold or copyhold lands, tenements, or hereditaments, or be heir apparent to any person possessing the same, to the amount required by the said act. Explaining trustees' qualification.

§ 36. Provided always, that if any trustee or commissioner who shall have been acting as such previously to the said 1st day of *January*, 1823, shall have lost or parted with subsequently thereto, Trustee losing his qualification to become incapable of acting.

(*a*) "An act to explain and amend an act, passed in the third year of the reign of his present majesty, to amend the general laws now in being for regulating turnpike roads in that part of *Great Britain* called *England*."



he shall keep a victualling house, or other house of public entertainment, or who shall sell wine, cider, beer, ale, spirituous or other strong liquors by retail, or who shall be a lessee or farmer of the tolls on any turnpike road, or of any part or parts thereof; and if any person not being qualified as aforesaid, or being disqualified by any of the causes aforesaid, or not having taken and subscribed the oath herein-before mentioned, or being a Quaker, not having made and subscribed the affirmation herein-before mentioned, shall nevertheless presume to act as a trustee or commissioner in the execution of any such act, every such person shall for every such offence forfeit the sum of 50*l.* to any person or persons who shall sue for the same, to be recovered, with full costs of suit, in any of H. M.'s courts of record at *Westminster*, by action of debt or on the case, or by bill, plaint, suit, or information, wherein no essoign, protection, wager of law, or more than one imparlance shall be allowed; and the person so sued or prosecuted shall prove that he is qualified, and not disqualified as aforesaid, or otherwise shall pay the said penalty, without any other proof or evidence on the part of the prosecutor, than that such person had acted as a trustee or commissioner in the execution of any act for repairing turnpike roads: Provided, that no act or proceeding touching the execution of any such act, which shall be done or performed by any such unqualified or disqualified person previously to his being convicted of the offence before mentioned, shall be thereby impeached or rendered nugatory, but all such proceedings shall be as valid and effectual as if such person had been duly qualified: Provided, that no mortgagee or assignee of any mortgage or other security, or any lender of money upon the credit of the tolls, or receiving interest thereout for the same, shall on that account only be deemed unqualified to act as a trustee or commissioner in the execution of any such act; and any trustees or commissioners appointed or to be appointed under any such act, who are or shall be in the commission of the peace, may act as such justices of the peace, in the execution of any such act, notwithstanding their being such trustees or commissioners, except in such cases only wherein they shall be personally interested otherwise than as a trustee, commissioner, mortgagee, assignee, lender of money, or holder of any security on the credit of the tolls granted by any such act.

3 G.4. c.126.

Penalty for acting, not being qualified, 50*l.*

Person sued to prove his qualification.

Proceedings not to be impeached on account of disqualification.

Mortgagees on the tolls not disqualified on that account.

§ 65. No trustee or commissioner of any turnpike-road shall, from and after this act shall be in force, enjoy any office or place of profit under any act in execution of which he shall have been appointed, or shall act as trustee or commissioner, or have any share or interest in, or be in any manner directly or indirectly concerned in, any contract or bargain for making or repairing or in any way relating to the road for which he shall act, or for building or repairing any toll-house, toll-gate, or weighing engine thereon, or for supplying any materials for the use thereof; nor shall any trustee or commissioner let out for hire any waggon, wain, cart, or other carriage, or any horse, cattle, or team, for the use of any turnpike road for which he shall act as a trustee or

Trustees and commissioners not to hold places of profit, or be concerned in contracts, &c.

materials to be used thereon, or for the damage done to any enclosed or private lands or grounds of any such trustee, in taking materials therefrom, or in carrying or conveying them over the same."



commissioners, by affixing the same in writing upon all the toll gates or turnpikes erected upon the said road for which they shall act as trustees or commissioners, and by inserting such notice in one or more of the newspapers circulating in that part of the country where such road shall pass, 14 days at least before every such meeting; and every person who shall be elected and appointed a trustee or commissioner pursuant to the directions of this act, shall and may act with the surviving and remaining trustees or commissioners in the execution of such act, to all intents and purposes, as if he had been therein named and appointed a trustee or commissioner. 3 G. 4. c. 126.

III. Actions and Proceedings against Trustees and Commissioners.

[3 G. 4. c. 126. § 134. — 4 G. 4. c. 95. § 71. — 7 & 8 G. 4. c. 24. § 2, 3.]

By stat. 7 & 8 *G.* 4. *c.* 24. § 2. Every trustee who shall order or direct the expenditure of any money for or towards the making, repairing, or altering any road not comprehended within the act in the execution of which he may be acting, or for or towards the performance of any act, matter, or thing not authorised by such act or by the said recited acts, such trustee shall be personally liable to the trust for the repayment of the money so expended, at the suit of any person, or any one trustee, or of the clerk to such trustees, on behalf of such trust; and that all the costs and charges of such suit, over and above any costs and charges recovered from the defendant in such suit, shall be paid and borne by such trust. 7 & 8 G. 4. c. 24 Trustees personally liable for money expended on roads not in trust.

§ 3. No trustee shall be personally subject or liable to be charged (except as next herein-before mentioned) with the payment of any sum or sums of money laid out or expended in or towards the making, repairing, or altering any turnpike road, nor shall execution issue against the goods and chattels of any trustee, by reason of his having acted as such trustee, or having signed or authorised or directed any contract or security to be entered into relating to any such road, unless in such contract or security such trustee shall have in express words rendered himself so personally liable. No trustee to be personally liable as such.

By stat. 3 *G.* 4. *c.* 126. § 134. It is enacted, that in all cases where any action shall be brought by or against any trustee or commissioner of any turnpike road, evidence of such trustee or commissioner *having acted as such*, together with the act of parliament by which he was appointed, or the order, or a copy of the order for his appointment or election, in case he was appointed or elected by the trustees or commissioners, shall be sufficient proof of his being a trustee or commissioner. 3 G. 4. c. 126. If action be brought against a trustee, evidence of his being appointed and acting sufficient.

By stat. 4 *G.* 4. *c.* 95. § 71. When and as often as any sum or sums of money shall be directed or ordered to be paid by any justice or justices of the peace, in pursuance of stat. 3 *G.* 4. *c.* 126. or this act, or any act relating to turnpike roads, as or by way of compensation or satisfaction for any materials or costs, or for any damage, spoil, or injury, of any nature or kind whatsoever, done or committed by such trustees or commissioners, or any person or persons acting by or under their authority, and such sum or sums 4 G. 4. c. 95. In case of non-payment of compensation for damages, &c. by the said trustees, &c. the same to be levied by dis-

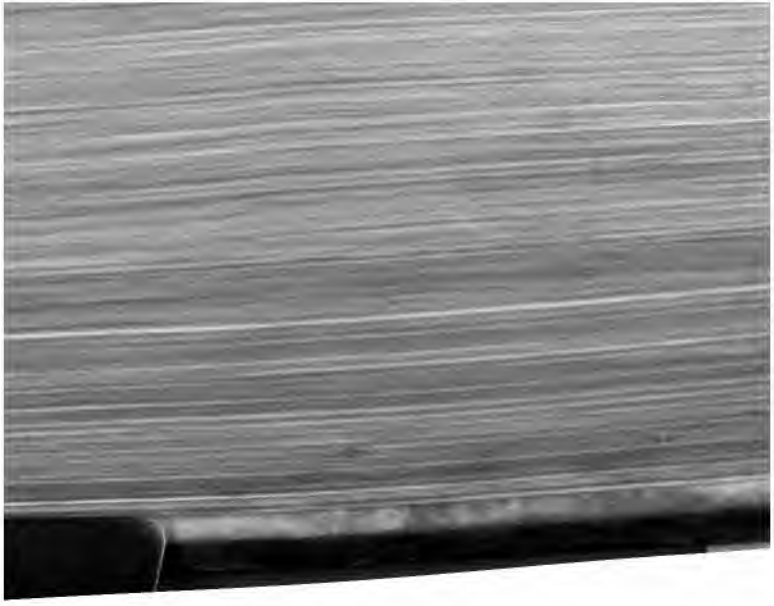


§ 44. Provided that it shall not be lawful for the trustees or commissioners acting under any act for making or maintaining any turnpike road to continue or appoint the person or persons who has been or may be appointed their clerk or clerks in the execution of such act, or the partner of any such clerks, or the clerk or clerks, or other person or persons in the service or employ of any such clerk or clerks, the surveyor or surveyors for the purposes of such act; or to continue or appoint any person or persons who has been or may be appointed surveyor or surveyors, or the partner or partners of any such surveyor or surveyors, the clerk or clerks to the said trustees or commissioners; and if any person shall accept both the offices of clerk and surveyor for the purposes of such act, or if any person, being the partner of any such clerk or clerks, or the clerk or clerks, or other person or persons in the service or employ of any such clerk or clerks, shall accept the office of surveyor, or being the partner of any such surveyor or surveyors, shall accept the office of clerk in the execution of such act, and if any such surveyor shall hold or accept any place or office of profit or trust under the said trustees, other than that of surveyor, every such person so offending shall, for every such offence, forfeit and pay the sum of 50*l.* to any person who shall sue for the same, to be recovered, with full costs of suit, in any of H. M.'s courts of record at *Westminster*, by action of debt or on the case, or by bill, suit, or information, wherein no essoign, protection, or wager of law, nor more than one imparlance shall be allowed.

4 G. 4. c. 95. Surveyor and clerk not to be the same person.

And by stat. 7 & 8 *G.* 4. *c.* 24. § 4. It shall not be lawful for any trustees to continue or appoint the person who has been or may be appointed their clerk in the execution of any act for repairing or maintaining any turnpike road, or the partner of any such clerk, or the clerk or other person in the service or employ of any such clerk or of his partner, the treasurer for the purposes of such act, or to continue or appoint any person who has been or may be appointed treasurer, or the partner of any such treasurer, or the clerk or other person in the service or employ of any such treasurer or of his partner, the clerk for the purposes of such act; and if any person shall accept both the offices of clerk and treasurer for the purposes of such act, or if any person being the partner of any such clerk, or the clerk or other person in the service or employ of any such clerk or of his partner, shall accept the office of treasurer, or shall act as deputy of the treasurer, or in any manner officiate for the treasurer, or being the partner of any such treasurer, or the clerk or other person in the service or employ of any such treasurer or of his partner, shall accept the office of clerk in the execution of such act, or shall act as deputy of such clerk, or in any manner officiate for such clerk, or if any such treasurer shall hold any place of profit or trust under the said trustees other than that of treasurer, every such person so offending shall for every such offence forfeit and pay the sum of 100*l.* to any person who shall sue for the same, to be recovered, with full costs of suit, in any of H. M.'s courts of record at *Westminster*, by action of debt or on the case, or by bill, suit, or information, wherein no essoign, protection, wager of law, nor more than one imparlance shall be allowed.

7 & 8 G. 4. c. 24. Treasurer and clerk not to be the same person.



house or building erected or used by the trustees of any turnpike road for the residence or accommodation of persons appointed for weighing any waggons or other carriages, and no apprentice or servant of any such collector or receiver shall thereby gain a settlement in any parish or place; and that no tolls or penalties for overweight to be taken at any house or weighing machine erected, or to be erected, or adjoining to any turnpike road, nor any person whatsoever in respect of such tolls or penalties, or any house or building as aforesaid, shall be rated or assessed towards the payment of any poor's rates, or any other public or parochial rate or levy whatsoever.

4 G.4. c.95. &c. residing in any house erected by the trustees not to gain a settlement.

By stat. 3 *G.4. c.* 126. § 52. If any collector, or other person appointed to collect the tolls on any turnpike road, shall permit or suffer any waggon, wain, cart, or other carriage to be drawn or pass upon any turnpike road within the view or with the knowledge of such collector or toll-gatherer, or to pass through any toll-gate or bar, with wheels of a less breadth, or of a different construction, than by this act allowed, or without such names and descriptions painted thereon as are hereinafter directed, and shall not, within the space of one week, proceed for the recovery of the forfeiture or penalty hereby inflicted, or shall allow any coach, chariot, waggon, cart, or other carriage, or any passenger, to pass through any toll-gate at which such collector or other person shall be stationed, without paying the toll payable, or shall be guilty of any other misconduct in his office, every collector or other person so offending, and being thereof convicted before one justice, shall forfeit for every such offence any sum not exceeding *5l.*, as the justice by and before whom such offender shall be convicted shall judge proper.

3 G.4. c.126. Collectors permitting carriages to pass otherwise than allowed by the act, and not prosecuting, to forfeit not exceeding *5l.*

Collector guilty of misconduct.

By stat. 4 *G.4. c.* 95. § 30. Every toll-collector on every turnpike road shall place, or cause to be placed, on some conspicuous parts of the fronts of the several toll-houses at which they shall be respectively stationed, and so that the same shall appear to public view, their christian and surnames, painted in black on a board with a white ground, each of such letters of such name or names to be at least two inches in length, and of a breadth in proportion, and such board shall be and remain at such toll-house during the whole of the time that the person whose name shall be expressed thereon shall be on duty thereat; and if any collector of the said tolls shall not place such board, and keep the same there during the time he shall be such collector as aforesaid, or shall demand and take a greater or less toll from any person than he shall be authorised to do by virtue of the powers of any act, or of the orders and resolutions of the trustees or commissioners made in pursuance thereof, or shall demand and take a toll from any person or persons who shall be exempt from the payment thereof, and who shall claim such exemption, or shall refuse to permit or suffer any person or persons to read, or shall in anywise hinder any person or persons from reading the inscriptions on such board, or shall refuse to tell his christian and surname to any person or persons who shall demand the same, on being paid the said tolls, or any of them, or shall, in answer to such demand, give a false name or names, or shall refuse or omit to give to the person paying the toll a ticket denoting the payment of the tolls, and naming and specifying the toll-gate at which such ticket has been

4 G.4. c.95. Toll-collectors to put up their names;

taking greater or less toll, &c.



any of H. M.'s courts of record at *Westminster*, by action of debt or on the case, or by bill, suit, or information, wherein no essoign, protection, or wager of law, nor more than one imparlance, shall be allowed. 3 G.4. c.126.

§ 75. No person shall be capable of holding any place of profit under any trustees or commissioners of any turnpike road, who shall sell any wine, ale, spirituous liquors, or provisions by retail. Victuallers not to hold places of profit.

§ 76. The trustees and commissioners of every turnpike road shall and they are hereby required to take sufficient security from every treasurer to be appointed by them for the purposes of any act or acts of parliament for making, repairing, or maintaining any turnpike road, for the due and faithful execution of his office, before such treasurer shall enter upon his office; and if they shall so think proper, shall and may also take such security from any other officer to be appointed under or by virtue of this or any other act. *Vide* Form, No. XVI. Treasurer to give security. Security may be taken from any other officer.

By stat. 4 *G.* 4. *c.* 95. § 47. All such officers as shall have been or shall be appointed by any trustees or commissioners of any turnpike road, shall from time to time, when thereunto required by the trustees or commissioners, deliver to such trustees or commissioners, or to such person or persons as they shall for that purpose appoint, true, exact, and perfect accounts in writing, under their respective hands, of all monies which they and every of them respectively shall have received to that time, by virtue of any act, and how much thereof hath been paid and disbursed, and for what purposes, together with the proper vouchers for such payments, and shall pay all such monies as shall remain in their or any of their hands to the said trustees or commissioners, or to such person or persons as they shall appoint to receive the same, and not otherwise, within such time as such trustees or commissioners shall limit or appoint; and if any such officer or person shall refuse or neglect to produce or deliver up such accounts, and the vouchers relating to the same, or shall refuse or neglect to pay the money due on such account within the time or in manner aforesaid, or if any such officer or person shall refuse or neglect to deliver up to the said trustees or commissioners, or to such person or persons as they shall appoint, within ten days after being thereunto required by the said trustees or commissioners, all the books, papers, or writings in his custody or power, relating to the execution of any such act, then and in every or any of the said cases it shall be lawful for any one justice of the peace for the county, division, or riding in which such road, or any part thereof, shall be situate, upon complaint (No. XVIII.) made to him by or on behalf of the said trustees or commissioners; and such justice is hereby required, by warrant under his hand and seal, to summon (No. XVII.) such officer or officers, person or persons, to appear before him, and upon his, her, or their appearing, or not being to be found, to hear and determine the matter of such complaint in a summary way, and to settle the said account or accounts, if produced; and if upon confession of the officer or officers, person or persons, against whom any such complaint shall be made, or by the oath or oaths of any witness or witnesses (which oath such justice is hereby empowered and required to administer, without fee or reward); or upon inspection of the said accounts, if produced, it shall appear to such justice that any of the money which shall have 4 G.4. c.95. Officers of turnpike roads to account when required by trustees. Proceedings on neglect of officers to account.



repealed, or who may have or shall have had in their custody or possession any money, books, papers, writings, or other things relating to any such turnpike road, shall account for and pay and deliver over the same, and every part thereof, to the trustees for executing any subsequent act for maintaining such turnpike road, in like manner and under the like penalties as the several collectors and other persons receiving any money by virtue of the said recited acts of the third and fourth years of the reign of his present majesty, and of any local turnpike act, are by the said recited acts of the third and fourth years of the reign of his present majesty required to pay or account for the same. 9 G.4. c.77. deliver up books, &c.

§ 15. The treasurer, if appointed consistently with the provisions of the said recited acts of the 3d, 4th, and 7th and 8th years of the reign of his present majesty, and each and every clerk, receiver, collector, surveyor, and other officer, appointed under or employed in the execution of any act for making or maintaining any turnpike road, which may have expired or been repealed, shall hold and enjoy such their several and respective offices and employments until removed therefrom respectively by the trustees for executing any subsequent act for maintaining the same turnpike road; and each and every such treasurer, clerk, receiver, collector, surveyor, and other officer, shall have the like powers and authorities for the purpose of any such subsequent act, and shall be subject and liable to the like pains and penalties, and to the like powers of removal, and to the like rules and regulations in all respects whatsoever, as if he or they had been appointed under or by virtue of such subsequent act. Officers to hold their offices after any act is repealed, unless removed by trustees.

V. Meetings and Proceedings of Trustees.

[3 G. 4. c. 126. § 69, 70. 72, 73, 74. 78, 79, 80. — 4 G. 4. c. 35. — c. 95. § 39. 41, 42. 62.]

By stat. 4 *G.* 4. *c.* 35. After reciting that whereas it has happened that the trustees or commissioners appointed to carry into execution any act or acts of parliament have not been able to meet on the day appointed by such act or acts for carrying the same into execution, by reason that the day appointed for such meeting has been antecedent to the passing of such act or acts, whereby the intent of such act or acts hath been or may be frustrated: for remedy whereof, it is enacted that in all cases where the trustees or commissioners appointed by any act or acts of parliament have not been or shall not be able to meet on the day appointed for their first meeting by any such act or acts, by reason that the day appointed for such meeting has been or shall be antecedent to the passing of such act or acts, it shall and may be lawful for three or more of the said trustees or commissioners appointed to execute such act or acts to meet at the place appointed by such act or acts for the first meeting of such trustees or commissioners, on the fourteenth day after the passing of such act or acts, or of this act; and every such meeting shall be as good, valid, and effectual as if such trustees or commissioners had met in pursuance of the act or acts of parliament which they are appointed to carry into execution. 4 G.4. c.35. Where trustees or commissioners cannot meet on the day appointed by the act for their first meeting, the day being antecedent to the passing thereof, any three of such trustees, &c. may meet on the 14th day after the passing of such act.



to the trustees or commissioners of any road within five miles of the *Royal Exchange* in *London*; but such last-mentioned trustees or commissioners may expend any sum not exceeding twenty shillings for the use of such room. 4 G. 4. c. 95.

§ 41. If at any time it shall be thought necessary, for the better execution of any act of parliament for making or maintaining any turnpike road, that the trustees or commissioners of such road should meet before the time to which any meeting may be adjourned, it shall and may be lawful for any two or more of such trustees or commissioners (or for the clerk to the said trustees or commissioners, by an order in writing, signed by any two or more of them) to give notice of such earlier meeting by advertisement in some newspaper circulated in the neighbourhood of such road, and affixed on all the turnpike gates then standing on such road, in which notice shall be expressed the time, place, and purpose of such earlier meeting (such time not being less than fourteen days after publication of the said notice); and all the orders and determinations of the trustees or commissioners at all such meetings shall be as valid as if the same had been done at any other meeting of trustees or commissioners held by virtue of the said recited act or this act, or the act under and by virtue of which they shall act as trustees or commissioners: Provided always, that no other business than what shall be specified in such notice shall be transacted at any such meeting. How meetings on emergencies shall be held.

By stat. 3 *G.* 4. *c.* 126. § 69. All trustees and commissioners of every turnpike road or roads shall, and they are hereby required to hold a general meeting of the trust for which they shall respectively act, on a day to be by them, or any three or more of them, appointed, in the months of *April*, *September*, or *October*; of which meeting twenty-one days' notice shall be given, by inserting the same in some newspaper or newspapers usually circulating in the county or counties in which the road or roads, in respect whereof such meeting shall be held, lie or are situated, which said meeting shall be called or known as "*The General Annual Meeting of the Trustees or Commissioners*;" and at such meeting the trustees or commissioners assembled shall elect a chairman for the purposes thereof, and shall also audit their accounts, and report the state of the road or roads under their care and superintendence. 3 G. 4. c. 126. General annual meetings to be held.

§ 70. Where a sufficient number of the trustees or commissioners of any turnpike road shall not meet on the day appointed by any such act or acts for their first meeting, or shall not meet on the day appointed by adjournment for their meeting, or for want of a proper adjournment, by which means, or by some or one of them, the intent of the said act or acts may be frustrated, in all or either of the said cases it shall be lawful for so many of the said trustees or commissioners as shall meet, or the major part of them, or in case no such trustee or commissioner shall be present, for their clerk or clerks to cause notice in writing to be affixed on all the turnpike gates which shall be then erected on the said respective roads, or if no turnpike gate shall then be erected, to cause the like notice to be affixed in the most conspicuous place in one of the principal towns or places nearest to which the roads directed to be repaired do lie; and also in some public newspaper circulated in the county in which the road shall be si- If a sufficient number of trustees or commissioners do not attend, another meeting shall be appointed, of which ten days' notice shall be given.



to time, and at all times, to order and direct a book or books to be provided and kept by their clerk for the time being; in which book or books such clerk shall enter, or cause to be entered, true and regular accounts of all sums of money received, paid, laid out, and expended for or on account of the road for which such clerk shall act, and of the several articles, matters, and things for which such sums of money shall have been disbursed, laid out, and paid; and such book or books shall, at all seasonable times, be open to the inspection of the said trustees or commissioners, or any creditor or creditors on the tolls collected and taken on the road to which such books relate, without fee or reward: and the said trustees, or commissioners and creditors, or any of them, shall or may take copies of or extracts from the said book or books, or any part or parts thereof, without paying any thing for the same; and the said book or books shall be produced by the said clerk at all meetings of the said trustees or commissioners; and in case any clerk shall refuse to permit, or shall not permit any of the said trustees or commissioners, or any such creditor, to inspect any such book or books, or to take such copies or extracts as aforesaid; or in case such clerk shall refuse or neglect to produce such book or books at any meeting of the said trustees or commissioners, such clerk shall forfeit any sum of money not exceeding *5l.*, to be levied and applied in the same manner as other penalties are hereby directed to be levied and applied.

Account to be kept, and to be open to the inspection of trustees and creditors.

Penalty not exceeding *5l.* on clerk for refusing inspection, &c.

§ 74. The trustees and commissioners of every turnpike road may sue and be sued in the name or names of any one of such trustees or commissioners, or of their clerk or clerks for the time being; and no action or suit to be brought or commenced by or against any trustees or commissioners of any turnpike road by virtue of this or any other act or acts of parliament, in the name or names of any one of such trustees or commissioners, or their clerk or clerks, shall abate or be discontinued by the death or removal of such trustee, commissioner, clerk, or clerks, or any of them, or by the act of such trustee, commissioner, clerk, or clerks, or any of them, without the consent of the said trustees or commissioners; but any one of such trustees or commissioners, or of the clerk or clerks for the time being, to the said trustees or commissioners, shall always be deemed to be the plaintiff or plaintiffs, defendant or defendants (as the case may be), in every such action or suit: Provided that every such trustee, commissioner, clerk or clerks, shall be reimbursed and paid out of the monies belonging to the turnpike road, for which he or they shall act, all such costs, charges, and expenses as he or they shall be put unto, or become chargeable with, or liable to, by reason of his or their being so made plaintiff or plaintiffs, defendant or defendants. (*a*)

Trustees may sue and be sued in the name of their clerk, &c.

(*a*) A turnpike act directed, "That if any person had cause of action against the trustees, the action should be brought against the treasurer;" It was held, that the action against the treasurer was substituted only for such action as might be maintained against the whole body of trustees, and that an action would not lie against him for the act of five, although they formed a quorum. *Everett* v. *Cooch*, 7 *Taunt.* 1. By a turnpike act trustees were appointed, with an authority to cut drains in lands adjoining the road, making reasonable satisfaction to the owners; a drain was cut by an order signed by a competent number of trustees, and according to the plan of a surveyor, in land adjoining the plaintiff's, by which the latter was overflowed; an action for the damage was brought against one

3 G.4. c.126. Penalty, 50*l*.

trustees or commissioners, for every refusal, neglect, or omission, the sum of 50*l*., to be applied to the use of the road on which such toll-gate or bar shall be erected.

If mortgagee keeps possession after he has received the money due, he shall forfeit double the sum and treble costs.

§ 48. If any such mortgagee or mortgagees shall keep possession of any toll-gate or bar by him, her, or themselves, or by any other person or persons on his, her, or their behalf, and receive the tolls or duties thereat, or of any such rents and profits as aforesaid, after such mortgagee or mortgagees shall have received the full sum or sums of money due on their respective mortgage or mortgages, and the interest thereof with costs, such mortgagee or mortgagees shall forfeit, as a penalty, to the trustees or commissioners, double the sum or sums of money he, she, or they shall have received, over and above the sum or sums of money due as aforesaid, with treble costs of suit, to be recovered by the treasurer or clerk to such trustees or commissioners, by action of debt, bill, plaint, or information, in any of H. M.'s courts of record, which when recovered shall be applied to the use of the respective road or roads on which such toll-gate or bar shall be placed, or such rents appropriated.

An action of ejectment may be supported by one mortgagee.

§ 49. If any mortgagee or mortgagees of any tolls, toll-gates, bars, chains, toll-houses, and buildings, on any turnpike road, shall seek to obtain the possession of the said toll-gates, bars, chains, toll-houses and buildings, in order to pay himself, herself, or themselves the principal money and interest, or any part thereof, due to him, her, or them, it shall be competent for him, her or them, as lessor or lessors of the plaintiff, and upon his, her, or their demise only, and without uniting in such demise the other mortgagees of the said tolls and premises, to obtain such possession; but such person or persons who shall obtain the possession thereof, shall not apply the tolls which may consequently be received by him, her, or them, to his, her, or their own exclusive use and benefit, but to and for the use and benefit of all the mortgagees of the said premises, *pari passu*, and in proportion to the several sums which may be due to them as such mortgagees.

Power to borrow money.

§ 81. It shall be lawful for the trustees or commissioners of any turnpike road, to borrow and take up at interest, on the credit of the tolls arising on such road, such sum or sums of money as they shall from time to time think proper, and to demise and mortgage the tolls on such road, or any part or parts thereof, and the turnpikes and toll-houses for collecting the same, (the costs and charges of which mortgages shall be paid out of the tolls,) as a security to any person or persons or their trustees who shall advance such sum or sums of money; which mortgages shall be in the words or to the effect following; (that is to say)

Form of mortgage.

BY virtue of an act passed in the ——— year of the reign of ———, intituled [here set forth the title of this act], *we, whose hands and seals are hereunto subscribed and set, being ——— of the trustees* [or, *commissioners*] *for putting into execution an act, passed in the ——— year of the reign of ———, intituled,* [here set forth the title of the act under which the trustees or commissioners borrowing the money and granting the mortgage shall act,] *in consideration of the sum of ———l. sterling, advanced and paid by* A. B. *of ———, to the treasurer of the said trustees* [or,

and signed, cause a sufficient number of copies of such statements to be printed, and direct their clerk to transmit a copy thereof to each acting trustee or commissioner, having duly qualified himself to act as such trustee or commissioner of such road. 3 G.4. c.126.

VI. Payment of Subscriptions enforced.

[9 G. 4. c. 77.]

By stat. 9 *G.* 4. *c.* 77. § 6. So much of the stat. 3 *G.* 4. *c.* 126. as related to the recovery of subscriptions is repealed. And by § 7. it is enacted, that the several and respective persons who shall subscribe for or agree to advance any money for or towards the making or maintaining any turnpike road or roads, or highway intended to be made turnpike, shall and they are hereby required to pay the sum or sums of money so subscribed, within such time or times, and in such parts and proportions, as shall be expressed in the writing which shall be subscribed by them or on their behalf, or as the trustees of any such turnpike road shall order and direct; and the same shall be demanded by and paid to such person or persons as the said trustees shall by any writing under their hands authorise to receive the same; and if any person or persons shall neglect or refuse to pay the same, or any part thereof, as aforesaid, it shall be lawful for the said trustees to sue for the same in the name of any one of such trustees or of their treasurer or clerk, and to recover the same, together with full costs of suit, in any of H. M.'s courts of record by action of debt or on the case, by bill, plaint, suit, or information, wherein no essoign, protection, or wager of law, nor more than one imparlance, shall be allowed; and all such monies shall be vested in the said trustees, and applied as in the act for making or maintaining any such turnpike road or roads shall be mentioned. 9 G.4. c. 77. Enforcing the payment of money subscribed. See form (No. XIV.)

VII. Mortgage of Tolls.

[3 G. 4. c. 126. § 47, 48, 49. 81. — 4 G. 4. c. 95. § 60, 61. — 9 G. 4. c. 77. § 10, 11, 12, 13.]

By stat. 3 *G.* 4. *c.* 126. § 47. It is enacted, that all and every mortgagee and mortgagees that hath or have taken or been in possession, or shall hereafter take or be in possession of any toll-gate or bar set up or erected on any turnpike road, or of any lands or tenements, the rents and profits whereof are appropriated to the repairs of any part of any turnpike road, shall, within 21 days after he, she, or they shall have received notice in writing from the trustees or commissioners of such turnpike road, render an exact account in writing to such trustees or commissioners, or to such person as they shall appoint, of all monies received by such mortgagee or mortgagees, or by any other person or persons for his, her, or their use and benefit, or by his, her, or their authority, at such toll-gate or bar or otherwise, and what he, she, or they have expended in keeping or repairing the same; and in case he, she, or they shall neglect to render such account when required as aforesaid, he, she, or they shall severally forfeit to the said 3 G.4. c.126. Mortgagees in possession of the tolls to account to the trustees.

3 G.4. c.126. thereby secured, be creditors on the tolls by such act granted, and on the said toll-gates and toll-houses, in equal degree one with another, or in such order as shall be agreed upon and stipulated by the said trustees or commissioners at the time of the advance of their respective shares. See *Doe ex dem. Banks* v. *Booth*, 2 *Bos. & Pull.* 219.

4 G.4. c.95. Instead of paying off creditors rateably, trustees may do so by lot.

By stat. 4 *G.* 4. *c.* 95. § 60. In case the trustees or commissioners of any turnpike road shall at any time or times be desirous of paying off any portion of the principal monies due and owing upon the credit of such road, where all the interest due thereon shall have been duly paid or otherwise satisfied, it shall and may be lawful for them, at any meeting to be holden according to the directions of the said recited act or this act, or of the act or acts in execution of which they shall act, (notice of such intended meeting and of the purposes thereof being first given at least 28 days preceding the same, by advertisement in some newspaper printed in or usually circulated in the neighbourhood of the said road,) if they shall think fit, instead of paying the same rateably amongst all the creditors, to determine by lot to which of such creditors the whole or any portion thereof shall be so paid, and to pay the same to such creditor or creditors only, or to any of the creditors, with the consent of all the other creditors.

Trustees not personally liable for mortgages.

§ 61. Provided always, that the trustees or commissioners for making or maintaining any turnpike road shall not be personally subject to or liable to be charged with the payment of any sum or sums of money by reason of their having signed or executed any mortgage, or assignment by way of mortgage, or other security to be made by virtue or in pursuance of any act for making or maintaining any turnpike road: Provided also, that in case any action, suit, or prosecution shall be brought or commenced against any such trustee or commissioner, for any thing done by virtue or in pursuance of stat. 3 *G.* 4. *c.* 126., or this act, or any such act for making or maintaining any turnpike road, all the costs, charges, and expenses of defending such action, suit, or prosecution, or which such trustee or commissioner shall incur in consequence thereof, shall be defrayed out of the tolls arising on the turnpike road for which such trustee or commissioner shall act.

9 G.4. c.77. Mortgages under former acts to remain good.

By stat. 9 *G.* 4. *c.* 77. § 10. Where, at the time of the expiration or repeal of any act for making and maintaining any turnpike road, any monies which may have been borrowed, subscribed, or advanced under the provisions of such act shall be due and owing on the credit of the tolls thereby granted, the term and tolls to be granted by all and every subsequent act and acts for maintaining such turnpike road shall be and the same are hereby made subject and liable to the payment of the monies which shall so remain due and owing on the credit of such tolls, and of all interest to grow due thereon, as fully and effectually, to all intents and purposes, as if such monies had been borrowed or become due on the credit or security of the tolls to be granted by such subsequent act or acts; and all and every person and persons who may owe or be subject or liable to the payment of any sum or sums of money to the trustees for carrying any such former act into execution, shall be liable to the payment thereof to the trustees for executing any such subsequent act or acts, and such monies shall be applied by them for the purposes of such subsequent act or acts.

commissioners], *do hereby grant and assign unto the said* A. B. *and his executors, administrators, and assigns, such proportion of the tolls arising and to arise on the said turnpike road, and the toll-gates and toll-houses erecting or to be erected for collecting the same, as the said sum of* ———*l. doth or shall bear to the whole sum now or hereafter to become due and owing on the security thereof: to have, hold, receive, and take the said proportion of the said tolls, toll-gates, toll-houses and premises, with the appurtenances, unto the said* A. B. *and his executors, administrators, and assigns, for and during the residue of the term for which the said tolls are granted by the said last-mentioned act, unless the said sum of* ———*l. with interest after the rate of* ———*l.* per centum per annum, *shall be sooner repaid and satisfied. Given under our hands this* ——— *day of* ———, *A.D.* 18—. 3 G.4. c.126.

And copies of all such mortgages shall be entered in a book or books to be kept for that purpose by the clerk or treasurer to the said trustees or commissioners, for which entry such clerk shall be paid the sum of *5s.* and no more, out of the tolls payable on such road, and which said book or books shall and may at all seasonable times be perused and inspected without fee or reward; and it shall be lawful for all persons respectively, to whom any mortgage shall be made as aforesaid, or who shall be from time to time entitled to the money thereby secured, to assign or transfer his, her, or their right, title, and interest in and to such mortgage, and the principal money and interest thereby secured to any other person or persons whomsoever; which assignment or transfer may be made in the following words, or words to the like effect, to be endorsed on such mortgage security, or to be under-written or thereunto annexed, and signed in the presence of and attested by one or more credible witness or witnesses; (that is to say) Mortgages may be assigned.

I A. B. [or, *I*, C. D., *assignee, executor, or administrator of* A. B. as the case may happen,] *do hereby assign and transfer this mortgage security, with all my right and title to the principal money thereby secured, and all interest now due and hereafter to grow due upon the same, unto* E. F., *his or her executors, administrators, and assigns. Dated this* ——— *day of* ———, *one thousand eight hundred and* ———. Form of assignment.

Witness, G. A. (*Signed*) A. B. [*or* C. D.]

Which transfer shall be produced and notified to the clerk or treasurer of the said trustees or commissioners, within two calendar months next after the day of the date thereof, who shall enter the same in the said book or books, for which entry the said clerk or treasurer shall be paid the sum of *5s.* and no more; and such transfer shall then entitle such assignee, his executors, administrators, and assigns, to the full benefit of such mortgage security; and every such assignee may, in like manner, assign or transfer the same, and so *toties quoties*; and it shall not be in the power of any person or persons (except the person or persons to whom the same shall be last transferred, his, her, or their respective executors or administrators,) to release, discharge, or make void the original mortgage security, or the monies due thereon, or any part thereof; and all persons to whom any such mortgage or transfer shall be made as aforesaid shall, in proportion to the sum or sums of money

9 G. 4. c. 77.

causeways, bridges, arches, banks, culverts, ditches, drains, and fences on the line of such road, as they shall think necessary or expedient; and it shall also be lawful for such trustees, and for their surveyors or surveyor and workmen, with or without carts or carriages, from time to time to enter upon the lands and grounds or hereditaments through which or whereupon such road, foot-path, causeways, bridges, arches, banks, culverts, ditches, drains, and fences is or are intended to be made or pass, and also upon any adjoining lands or grounds, to stake out the same in such manner as such trustees shall think necessary or expedient, without being deemed a trespasser or trespassers, and without being subject or liable to any fine, penalty, or punishment for entering or continuing upon such lands or premises respectively, for any of the purposes of the act, for making or maintaining any such turnpike road; and if any person shall pull up, remove, or detroy any stakes or other marks used for the purposes aforesaid, every person so offending shall forfeit and pay for every such offence any sum not exceeding *5l.*

Boulton v. *Crowther*, *E.* 5 *G.* 4. 2 *B.* & *C.* 703. By the general turnpike act, the trustees of roads are authorised to divert, shorten, alter, or improve the course or path of any of the roads under their management, and divert, shorten, vary, alter, and improve the course or path of any roads through or over any commons or waste grounds, or uncultivated lands without making satisfaction for the same; and through or over any private lands, tendering, or making satisfaction to the owners thereof, and persons interested therein for the damage sustained thereby. The court of K. B. held, that under this clause, the trustees are authorised to lower hills and raise hollows, and that the trustees are not liable to an action for a consequential injury resulting from an act which they are authorised to do.

3 G. 4. c. 126. Lands may be purchased for improving the road.

By stat. 3 *G.* 4. *c.* 126. § 84. It shall be lawful for the trustees or commissioners of any turnpike road to treat, contract, and agree with the owners of and persons interested in any land, tenements, hereditaments, and premises, with their appurtenances, which they shall deem necessary to purchase for the purpose of widening, diverting, altering, and improving such road, for the purchase thereof, and for the loss or damage such owners or persons may otherwise sustain; and it shall be lawful for all bodies politic, corporate, or collegiate, corporations aggregate or sole, tenants for life or in tail, husbands, guardians, trustees, feoffees in trust, committees, executors, administrators, and all other persons whomsoever, not only for or on behalf of themselves, their heirs and successors, but also for and on behalf of the person or persons entitled in reversion, remainder, or expectancy after them, and for and on behalf of their cestuique trusts, whether femes covert, infants, or issue unborn, lunatics, idiots, or other person or persons whomsoever, and to and for all femes covert who are or shall be seised of or interested in their own right, and to and for all and every person and persons whomsoever who are or shall be possessed of or interested in any such lands, tenements, hereditaments, or premises, or who shall sustain any damage as aforesaid, to contract with the said trustees or commissioners for the sale thereof, or for the satisfaction to be made for the same, or for such damage as aforesaid; and by conveyance, lease, and release, or bargain and sale, to sell and convey unto the said trustees or commis-

Bodies politic, &c. and incapacitated persons, empowered to sell.

§ 11. All conveyances, bonds, covenants, agreements, contracts, and securities, made or entered into by any person or persons to or with the trustees for carrying any local turnpike act into execution, or by any other person or persons on behalf of the said trustees, according to the provisions of any such act, shall remain in full force and effect, notwithstanding the expiration or repeal of such act, and shall be and continue available in all courts, and before all judges and justices having jurisdiction, as the case may require, until the same are fully satisfied and performed, on account and for the benefit of the trust to be created by any subsequent act for maintaining the said turnpike road, or any part thereof.

9 G.4. c.77.

Bonds, contracts, &c. to remain in full force, notwithstanding the repeal of any act.

§ 12. The trustees appointed by virtue of any local turnpike act may receive in and cancel all or any of the mortgages granted under the trusts of any former act for the same turnpike road, or any part thereof, and instead and in lieu thereof give and execute another mortgage or other mortgages, at the expense of the parties requiring the same.

Trustees may cancel mortgages under former acts, and execute others.

§ 13. In all cases where it shall appear by the books kept by the clerk or treasurer to the trustees of any turnpike road, or by any satisfactory evidence adduced at any meeting of sucht rustees, that any person or persons is or are a creditor or creditors on security of the tolls authorised by any local turnpike act to be taken, and that the mortgage or assignment of the tolls for securing any such sum or sums of money has been lost, mislaid, or by accident destroyed, it shall and may be lawful for the said trustees, or any three or more of them, to execute, at the expense of the person or persons applying for the same, an assignment of the tolls by any such local turnpike act granted, for the sum or sums of money mentioned in such original assignment or transfer; and every assignment to be executed shall be valid and effectual for the purposes thereby intended.

Trustees may renew mortgages, &c. lost or mislaid.

VIII. Powers to make and improve Roads.

[3 G. 4. c. 126. § 84, 85, 86, 87, 88, 89. — 4 G. 4. c. 95. § 55. 63. 65, 66. 68, 69. 78. — 7 & 8 G. 4. c. 24. § 7, 8, 9, 10, 11, 12, 13, 14, 15. 17. — 9 G. 4. c. 77. § 8, 9.]

By stat. 9 *G.* 4. *c.* 77. § 8. So much of the act of 3 *G.* 4. *c.* 126. as authorised the trustees of any turnpike road to make, divert, shorten, vary, alter, and improve any such road, is repealed.

9 G.4. c.77. So much of 3 G.4. c. 126. as authorised the making, varying, and improving turnpike roads, is repealed.

§ 9. It shall be lawful for the trustees of any turnpike road, and they are hereby authorised and empowered (subject to the restrictions in the said recited acts and this act contained), to make, divert, shorten, vary, alter, and improve the course or path of any of the several and respective roads under their care and management, or of any part or parts thereof; and to divert, shorten, vary, alter, and improve the course or path of any of the said several and respective roads, or any part or parts thereof, upon, in, through, or over any private lands, grounds, or hereditaments, making or tendering satisfaction to the owners thereof and persons interested therein for the same, or for any damage they may sustain thereby; and also upon, in, over, or through any common or waste lands, without making any satisfaction for such common or waste lands, in such manner as they shall think proper; so that any such road shall *not exceed sixty feet in width*, together with such footpath,

Powers for making and improving the roads.

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the purposes of the act, for ma
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Boulton v. *Crowther*, *E.* 5
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3 G. 4. c. 126. Lands may be purchased for improving the road.

By stat. 3 *G.* 4. *c.* 126. § 84.
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Bodies politic, &c. and incapacitated persons, empowered to sell.

sioners all or any such lands, tenements, hereditaments, or premises, or any part thereof, for the purposes aforesaid; and all contracts, sales, and conveyances which shall be so made shall be good, valid, and effectual to all intents and purposes, without fine or recovery, and shall be a complete bar to all estates tail and other estates, rights, titles, trusts, and interests whatsoever, any law, statute, usage, custom, or other matter to the contrary notwithstanding; and all such bodies politic, corporate, or collegiate, corporations aggregate or sole, tenants for life or in tail, husbands, guardians, trustees, feoffees, committees, executors, administrators, and all other persons, shall be and are hereby indemnified for what they or any of them shall do by virtue or in pursuance of this act.

3 G.4. c.126.

Contracts binding.

§ 85. If any such bodies politic, corporate, or collegiate, corporations aggregate or sole, tenants for life or in tail, husbands, guardians, trustees, feoffees, committees, executors, administrators, or any other person or persons interested in any such lands, tenements, hereditaments, or premises, or sustaining any damage as aforesaid, upon notice (*a*) to him, her, or them given or left in writing at the dwelling-house or dwelling-houses, place or places of abode of such person or persons, or of the principal officer or officers of any such bodies politic, corporate, or collegiate, corporations aggregate or sole, tenants for life or in tail, or at the house of the tenant in possession of any such lands, tenements, hereditaments, or premises, shall for the space of 30 days next after such notice given or left as aforesaid, neglect or refuse to treat, or shall not agree in the premises, or by reason of absence shall be prevented from treating, then and in every such case the said trustees or commissioners shall cause such damage, value, or recompence to be enquired into and ascertained by a jury of 12 indifferent men of the county, riding, or place wherein such lands, tenements, hereditaments, or premises do lie; and in order thereto, the said trustees or commissioners are hereby empowered and required from time to time, as occasion shall require, to summon and call before such jury, and examine upon oath, all and every person and persons whomsoever who shall be thought necessary and proper to be examined concerning the premises (which oath the said trustees or commissioners, or any or either of them, are and is hereby empowered to administer): and such trustees or commissioners shall, by ordering a view or otherwise, use all lawful ways and means, as well for their own as for the said jury's information in the premises; and after the said jury shall have enquired of and assessed such damage and recompence, they the said trustees or commissioners shall thereupon order the sum or sums of money so assessed by the said jury to be paid to the said owners or other persons interested, according to the verdict or inquisition of such jury; and such verdict or inquisition, and judgment, order, and determination thereon, shall be final, binding, and conclusive to all intents and purposes against all parties and persons whomsoever claiming or to claim any estate in possession, reversion, or otherwise, their heirs and successors, as well absent as present, infants, femes covert, idiots, lunatics, and persons under any other disability whatsoever, bodies politic, cor-

When persons interested neglect or refuse to treat, the value may be ascertained by a jury.

(*a*) See *R.* v. *Bagshaw*, 7 *T. R.* 364.

3 G.4. c.126.

porate or collegiate, corporations aggregate or sole, tenants for life or in tail, as well as all and every person and persons whomsoever (a); and for summoning and returning such juries, the said trustees or commissioners are hereby empowered to issue their warrant or warrants in writing to the sheriff of the county wherein such lands, tenements, hereditaments, or premises do lie, commanding him to impannel, summon, and return an indifferent jury of 24 persons, qualified to serve upon juries, to appear before such trustees or commissioners at such time and place as in such warrant or warrants shall be appointed; and such sheriff, or his deputy or deputies, is and are hereby required to impannel, summon, and return such number of persons accordingly; and out of the persons so impannelled, summoned, and returned, or out of such of them as shall appear upon such summons, the said trustees or commissioners shall and are hereby empowered and required to swear or cause to be sworn 12 men, who shall be a jury for the purposes aforesaid; and in default of a sufficient number of jurymen, the said sheriff, or his deputy or deputies, shall return other honest and indifferent men of the standers-by, or that can be speedily procured to attend that service, to the number of 12; and all persons concerned shall have their lawful challenges against the said jurymen when they come to be sworn, but shall not challenge the array; and the said trustees or commissioners acting in the premises shall have power, from time to time, to impose any reasonable fine or fines upon such sheriff, his deputy or deputies, bailiff or bailiffs, agent or agents, making default in the premises, and on any of the persons that shall be summoned and returned on such jury, and who, without sufficient excuse, shall not appear, or appearing shall refuse to be sworn on the said jury, or being sworn shall refuse to give or shall not give their verdict, or in any other manner wilfully neglect their duty therein, contrary to the true intent and meaning of this act, and on any of the persons who, being required to give evidence before the said jury, shall, without sufficient excuse, refuse or neglect to appear, or appearing shall refuse to be sworn and examined or to give evidence, so that no one fine be more than 10*l.* on any such sheriff, deputy, bailiff, or agent, nor more than 5*l.* on any other person, for one offence.

(a) See *R.* v. *Sheppard, ante.*

Fines may be imposed on sheriffs, &c. making default in the premises.

Money assessed for lands, &c. to be paid by the trustees and tendered to the parties entitled thereto, or paid into the bank, upon which the premises shall vest in the trustees.

§ 86. Every sum of money or recompence to be agreed for or assessed as aforesaid, shall be paid out of any monies in the hands of the said trustees or commissioners, or out of the tolls granted by the act for making and repairing such turnpike road, or out of the monies to be borrowed on the credit thereof, to the party or parties, or person or persons respectively entitled thereto, or to their agents, or into the bank of *England*, in manner by this act directed (as the case may be); and upon such payment to such parties or persons, or their agents, or into the bank of *England*, and after 30 days' notice thereof given to such parties or persons, or to their agents, or left at their respective usual places of abode, or with the tenant or tenants in possession of such lands, tenements, hereditaments, and premises, then such lands, tenements, hereditaments, and premises respectively shall be vested in such trustees or commissioners, and shall and may be taken and used for the purposes of such act; and such lands, and the site of such lands, tenements, hereditaments, and premises, shall be laid into

and made part of the road, in such manner as the said trustees or commissioners shall direct, and shall be repaired, and kept in repair, by such trustees or commissioners, by the same ways and means as any other part of the road under their management is or ought to be kept in repair; and all parties and persons whomsoever shall be divested of all right and title to such lands, tenements, and hereditaments; and after such new road shall be completed, the lands or grounds constituting any former roads or road, or so much and such part or parts thereof as in the judgment of the said trustees or commissioners may thereby become useless or unnecessary, or shall or may be stopped up and discontinued as public highways (unless leading over some moor, heath, common, uncultivated land, or waste ground, or to some church, mill, village, town or place, lands or tenements, to which such new road or roads doth not or do not immediately lead, and which may therefore be deemed proper to be kept open either as a public or private way or ways, for the use of any inhabitant at large, or any individual or individuals (*a*), and shall be vested in, and shall and may be sold and conveyed by the said trustees or commissioners, in the manner herein mentioned, for the best price that can be gotten for the same, and the money arising by such sale shall be applied for the purposes of the act for repairing and maintaining such turnpike road; and all conveyances, being executed by the said trustees or commissioners, and enrolled in the office of the clerk of the peace for the county, city, or place wherein such road shall be situate, shall be good and effectual in the law to all intents and purposes whatsoever; or it shall be lawful for the said trustees or commissioners, instead of making such sale as aforesaid, to give up to the owners or proprietors of any adjoining lands, tenements, or hereditaments, whose building, land, or ground shall be had or taken for the purposes of this act, any part or parts of the present or old roads in lieu of and in exchange for the same, in such way and manner as such trustees or commissioners, and owners or proprietors, shall agree upon and think fit. (*b*)

3 G. 4. c. 126.

After new road is completed, the old road may be sold.

Conveyances executed by the trustees, and enrolled in the office of the clerk of the peace, to be valid.

By stat. 7 & 8 *G.* 4. *c.* 24. § 7. If any lands, tenements, or hereditaments, which shall be purchased for the purposes of any act for making or maintaining turnpike roads, shall be in mortgage to any person, then and in such case the trustees shall and they are hereby required to pay or cause to be paid to the mortgagee or mortgagees, his, her, or their executors, administrators, or assigns, upon application in writing made to the trustees or their clerk, signed by such mortgagee or mortgagees, his, her, or their executors, administrators, or assigns, such sum or sums of money as shall be agreed for, ascertained, and determined, for the purchase

7 & 8 G. 4. c. 24. For payment of mortgages on land purchased.

(*a*) Upon the construction of this section, the court of K. B. has decided that this exception does not take away from the trustees the power of stopping the excepted roads, but leaves them a discretion to do so, or not; and, therefore, that the trustees were empowered to stop up and give up to the owner of adjoining land, an old road leading to a church, &c. to which the new road did not immediately lead. *De Beauvoir* v. *Welch*, 7 *B.* & *C.* 266.

(*b*) Unless vested in them by the terms of the act appointing them, the property in the soil of a turnpike road is not in the trustees, but remains in the persons who were entitled to it before the act passed. The trustees have only the control of the highway. Per Ld. *Kenyon* C. J. *Davidson* v. *Gill*, 1 *East*, 64.

7&8 G.4. c.24. of such lands, tenements, or hereditaments, or a competent part thereof; and such sum or sums of money, when so paid, shall be and be deemed to be in discharge of the principal money, or part thereof, due on such mortgage or mortgages, and acknowledgment of the receipt thereof shall be made by endorsement on the mortgage deed or deeds, signed by such mortgagee or mortgagees, his, her, or their executors, administrators, or assigns, in the presence of one or more credible witness or witnesses; and such endorsement shall be and be deemed to be a full and sufficient discharge to the trustees from the mortgagee or mortgagees, his, her, or their executors, administrators, or assigns, and also a full and sufficient discharge to the mortgagor or mortgagors, his, her, or their heirs, executors, administrators, or assigns, from the mortgagee or mortgagees, his, her, or their executors, administrators, or assigns, for so much money as shall be expressed in such endorsement.

4 G.4. c.95. Sale of unnecessary tenements.

By stat. 4 *G.* 4. *c.* 95. § 63. In case the trustees or commissioners for making or maintaining any turnpike road shall become possessed of any tenements or hereditaments which are useless or unnecessary for the purposes of such road, it shall be lawful for the said trustees or commissioners to sell and dispose of the same, in such and the same manner as by the said recited act they are authorised and empowered to do, in the cases of any land or ground not wanted for the purposes of such road.

3 G.4. c.126. How expenses of jury and witnesses are to be borne.

By stat. 3 *G.* 4. *c.* 126. § 87. In case any jury or juries to be summoned and sworn pursuant to the directions and authority of this act shall give in and deliver a verdict or assessment for more money as a recompence or satisfaction for the right, interest, or property, of any person or persons in any such lands, tenements, hereditaments, or premises, or for any loss or damage to be by him, her, or them sustained, than what shall have been agreed to and offered by such trustees or commissioners before the summoning or returning the said jury or juries as a recompence or satisfaction for any such right, interest, or property, or for any loss or damage as aforesaid, then and in such case the costs and expenses of summoning and maintaining the said jury and witnesses, and all other expenses attending the hearing and determining such difference, shall be borne and paid by the treasurer to the trustees or commissioners, out of any money which shall then be in his hands, or out of any monies to be received by virtue of the act for repairing and maintaining such turnpike road, such costs and expenses to be settled and ascertained by some justice of the peace for the county or place wherein the dispute shall have arisen, not interested in the matter in question, who is hereby authorised and empowered to settle and determine the same, and to make an order on the treasurer of the trustees or commissioners liable thereto for the payment thereof; but if any such jury or juries so summoned and sworn as aforesaid shall give in and deliver a verdict or assessment for no more or for less money than shall have been agreed to and offered by the trustees or commissioners before the summoning and returning of the said jury or juries, as a recompence and satisfaction for any such right, interest, or property in any such lands, tenements, hereditaments, or premises, or losses or damages as aforesaid, then the costs and expenses of summoning and maintaining the said jury and witnesses, and all

other expenses as aforesaid, shall be borne and paid by the person or persons with whom such trustees or commissioners shall have such controversy or dispute; which said costs and expenses having been ascertained and settled by some justice of the peace for the county, riding, or place wherein the cause of dispute shall arise, not interested in the matter in question, (who is hereby required to examine and settle the same,) shall and may be deducted out of the money so assessed and adjudged, as so much money advanced to and for the use of such person or persons, and the payment or tender of the remainder of such monies shall be deemed and taken, to all intents and purposes, to be a payment or tender of the whole sum or sums so assessed and adjudged, or otherwise such costs and expenses, in case the same or any part thereof shall exceed such damages, and shall not be paid upon demand, after being so ascertained and settled as aforesaid, may be recovered by the said trustees or commissioners by the ways and means hereinafter provided for the recovery of penalties and forfeitures: Provided always, that in all cases where any person or persons shall, by reason of absence, have been prevented from treating, such costs and expenses shall be borne and paid by the said trustees or commissioners in manner aforesaid. See § 141. and 143. *post.* 3 G.4. c.126.

When new road shall be completed, old highway to be stopped up, and the land sold.

§ 88. When any turnpike road shall be diverted or turned, and the new road shall be made and completed, such new road shall be in lieu of the old road, and shall be subject to all the provisions and regulations in any act of parliament contained, or otherwise, to which the old road was subject, and shall be deemed and taken to be a common highway, and shall be repaired and maintained as such; and the old road shall be stopped up, and the land and soil thereof shall be sold by the trustees or commissioners to some person or persons whose lands adjoin thereto, as hereinafter mentioned with regard to pieces of ground not wanted; but if such old road shall lead to any lands, house, or place, which cannot, in the opinion of the said trustees or commissioners, be conveniently accommodated with a passage from such new road, which they are hereby authorised to order and lay out if they find it necessary, then and in such case the old road shall be sold, but subject to the right of way and passage to such lands, house, or place respectively, according to the ancient usage in that respect; and the money arising from such sale in either of the said cases shall be applied towards the purchase of the land where such new road shall be made, or in the same manner as the tolls arising on such road, as the trustees or commissioners thereof shall think fit; and upon the completion of any contract whereby any part of the old road shall be given in payment for the value of the ground taken for the new road, or upon payment of the price of any part of the old road, the soil of such old road shall become vested in the purchaser thereof and his heirs; but all mines, minerals, and fossils lying under the same shall continue the property of the person or persons who would from time to time have been entitled to the same if such old road had continued.

Mines, &c.

When any parts of land not wanted for the

§ 89. Where the trustees or commissioners of any turnpike road shall have purchased, or shall be possessed of any piece or pieces of ground not wanted for the purposes of such road, it

3 G. 4. c. 126.

purposes of roads are to be sold, the first offer to be made to the original or adjoining owners.

shall be lawful for such trustees or commissioners to sell and dispose of the same: Provided always, that the said trustees or commissioners, before they shall sell and dispose of any such piece or pieces of ground not wanted for the purposes of such turnpike road as aforesaid, to any other person or persons, shall first offer the same to the person or persons of whom the same shall have been purchased, or to the person or persons whose lands shall adjoin thereto, and if such person or persons respectively shall then and thereupon refuse, or shall not agree (except with respect to or on account of the price thereof) to purchase the same respectively, on an affidavit being made and sworn before a master or master extraordinary in the high court of chancery, or before one of H. M.'s justices of the peace for the county, liberty, or place where such ground is situate (who are hereby respectively empowered to take such affidavit), by some person or persons no way interested in the said piece or pieces of ground, stating that such offer was made by or on the behalf of such trustees or commissioners, and that such offer was then and thereupon refused, or was not agreed to by the person or persons to whom the same was made, such affidavit shall in all courts whatsoever be sufficient evidence and proof that such offer was made, and was refused, or not agreed to by the person or persons to whom such offer was made (as the case may be); and in case such person or persons shall be desirous of purchasing such piece or pieces of ground, and he, she, or they and the said trustees or commissioners shall differ or not agree with respect to the price thereof, then the price or prices thereof shall be ascertained by a jury, in manner in this act directed with respect to disputed value of premises to be taken and used in pursuance of this act, and the expense of hearing and determining such difference shall be borne and paid in manner herein-before directed with respect to such purchasers made by the said trustees, *mutatis mutandis*; and the money to arise by the sale or sales of such pieces or parcels of ground shall be applied by the trustees or commissioners to the purposes of the act for repairing and maintaining such turnpike road, but the purchaser or purchasers thereof shall not be answerable or accountable for any misapplication or non-application of such money; and the conveyances of such piece or pieces of ground shall be made to the purchaser or respective purchasers thereof, and in such manner and form as is herein-before directed with respect to the conveyances to be made of the land constituting any part of the roads herein-before directed to be sold.

What shall be evidence of such offer and refusal.

In case of dispute as to price, the value to be ascertained by a jury.

7&8 G. 4. c. 24. Repeal of part of 3 G. 4. c. 126.

By stat. 7 & 8 *G.* 4. *c.* 24. § 8. So much of the act 3 *G.* 4. *c.* 126 as directs the application of compensation-money for lands, tenements, or hereditaments, purchased for the purposes of any act for making or maintaining any turnpike roads, is repealed.

Application of compensation when amounting to 200*l.*

§ 9. If any money shall be agreed or awarded to be paid for any lands, tenements, or hereditaments, purchased, taken, or used by the trustees, which shall belong to any body politic, corporate, or collegiate, corporation aggregate or sole, infant, lunatic, tenant for life or in tail, general or special, feoffee in trust, guardian, committee, trustee, feme covert, or other incapacitated person, such monies shall, if the same amount to the sum of 200*l.*, with all convenient speed be paid into the bank of *England*, in the name and with the privity of the accountant general of the court of exche-

quer, to be placed to his account *ex parte* the trustees for executing such act, pursuant to the method prescribed by an act passed in the first year of the reign of King *George* the 4th, intituled *An act for the better securing the monies and effects paid into the court of exchequer at* Westminster, *on account of the suitors of the said court, and for the appointment of an accountant general and two masters of the said court, and for other purposes,* and the general orders of the said court, and without fee or reward; and such money, when so paid in, shall be applied, under the direction and with the approbation of the said court, to be signified by an order to be made upon a petition to be preferred in a summary way by the person who would have been entitled to the rents and profits of the said lands, tenements, or hereditaments, in the purchase of the land tax, or the discharge of any debt or debts, or such other incumbrances, or part thereof, as the said court shall authorise to be paid, affecting the same lands, tenements or hereditaments, or affecting other lands, tenements, or hereditaments standing settled therewith to the same or the like uses, intents or purposes; or where such money shall not be so applied, then the same shall be laid out and invested, under the direction and approbation of the said court, in the purchase of other lands, tenements, or hereditaments, which shall be conveyed and settled to, for, and upon such and the like uses, trusts, intents, and purposes, and in the same manner as the lands, tenements, or hereditaments, which shall be so purchased, taken, or used as aforesaid, stood settled or limited, or such of them as at the time of making such conveyance and settlement shall be existing undetermined and capable of taking effect; and in the meantime, and until such purchase shall be made, the said money shall, by order of the said court, upon application thereto, be invested by the said accountant-general, in his name, in the purchase of three pounds *per centum* consolidated or three pounds *per centum* reduced bank annuities; and in the meantime, and until the said bank annuities shall be ordered by the said court to be sold for the purposes aforesaid, the dividends and annual produce of the said consolidated or reduced bank annuities shall from time to time be paid, by order of the said court, to the person who would for the time being have been entitled to the rents and profits of the said lands, tenements, or hereditaments so purchased, in case such purchase or settlement were made. 7&8 G.4. c.24. 1 G.4. c.35.

§ 10. Provided that if any money so agreed or awarded to be paid for any lands, tenements, or hereditaments, purchased, taken, or used, and belonging to any person under any disability or incapacity as aforesaid, shall be less than the sum of 200*l.*, and shall exceed the sum of 20*l.*, then and in all such cases the same shall, at the option of the person for the time being entitled to the rents and profits of the lands, tenements, and hereditaments so purchased, taken, or used, or of his guardian or guardians, committee or committees, in case of infancy, idiotcy, or lunacy, to be signified in writing under their respective hands, be paid into the bank of *England*, in the name and with the privity of the said accountant-general of the court of exchequer, and be placed to his account as aforesaid, in order to be applied in manner herein-before directed; or otherwise the same shall be paid, at the like option, to two trustees, to be nominated by the person or persons making Application when under 200*l.* and above 20*l.*

have been entitled to the rents
or hereditaments so purchased,
the trustees taking such lands,
think fit; or in case of infanc
guardian or guardians, committ
use and benefit of such person

In case of not making out title or persons not being found.

§ 12. In case the corporatio
sums of money shall be award
tenements, or hereditaments,
shall not be able to make a goo
faction of the trustees, or in
or sums of money shall be so
person entitled to such lands, t
known or discovered, then and
for the said trustees to order th
paid into the bank of *England*,
of the accountant-general of
placed to his account, to the c
said lands, tenements, or heredit
the order, control, and disposit
which said court, on the appl
to such sum or sums of money
petition, shall and is hereby em
ceeding or otherwise, as to the
the same to be laid out and inves
distribution thereof, or payme
ing to the respective estate or
son making claim thereto, and t
mises as to the said court shall
cashier or cashiers of the Bank
sum or sums of money, is and
or receipts for such sum or su
fying for what and for whose

the person who shall have been in possession of such lands, tenements, or hereditaments at the time of such purchase, and all persons claiming under such person, or under the possession of such person, shall be deemed and taken to be lawfully entitled to such lands, tenements, or hereditaments, according to such possession, until the contrary shall be shown to the satisfaction of the said court of exchequer; and the dividends or interest of the bank annuities to be purchased with such money, and also the capital of such bank annuities, shall be paid, applied, and disposed of accordingly, unless it shall be made appear to the said court that such possession was a wrongful possession, and that some other person was lawfully entitled to such lands, tenements, or hereditaments, or to some estate or interest therein. 7&8 G. 4. c. 24.

§ 14. Provided also, that where, by reason of any disability or incapacity of the corporation or person entitled to any lands, tenements, or hereditaments, the purchase-money for the same shall be required to be paid into the said court, and to be applied in the purchase of other lands, tenements, or hereditaments, to be settled to the like uses, it shall be lawful for the said court to order the expenses of all purchases from time to time to be made in pursuance of this act, or so much of such expenses as the said court shall deem reasonable, together with the necessary costs and charges of obtaining such order, to be paid by the trustees taking any such lands, tenements, or hereditaments who shall from time to time pay such sums of money for such purposes as the said court shall direct. The court may order reasonable expenses of purchases to be paid.

§ 15. Provided always, that the trustees shall not be required to pay any larger sum as a satisfaction for any materials raised, taken, or carried away from any lands or grounds, for making or repairing any turnpike road than such sum of money as it shall appear to the two justices settling and determining such satisfaction that such materials might or could have been actually sold for in case the same had not been raised, taken, or carried away by such trustees; and in case the said justices shall be of opinion that the said materials, before they had been so raised, taken, or carried away, could not have been sold or disposed of, then the said justices shall only assess the damage done to the lands or grounds of the owners or occupiers thereof, by the raising, gathering, or carrying away the same. Justices to award for materials no larger sum than they could actually be sold for.

By stat. 4 *G.* 4. *c.* 95. § 55. It is enacted, that all sales and conveyances of any lands, tenements, or hereditaments, to be sold by the trustees or commissioners of any turnpike roads, shall be made at the expense of such trustees or commissioners, and shall be expressed in the following or some similar form of words, as the circumstances of the case may require; *videlicet*, 4 G. 4. c. 95. Trustees to pay expense of sale of lands, &c.

Form of conveyances.

ME, ——, ——, *of the trustees or commissioners acting in execution of an act passed* [here insert the title of the act appointing them] *in consideration of the sum of* —— *to us paid by* [name of the purchaser] *do hereby grant and release to the said* [name of the purchaser] *all* [describing the premises to be conveyed], *and all our right, title, and interest to and in the same, and every part thereof, to hold to the said* [name of the purchaser], *his heirs, executors, administrators, and assigns, for ever, by virtue and according to the true intent and meaning of an act passed in the*

4 G.4. c.95. *fourth year of the reign of King* George *the fourth, intituled* An act [here set forth the title of this act]. *In witness whereof we have hereunto set our hands and seals, this* ——— *day of* ———.

Trustees not to pull down dwelling-houses, or take in gardens, &c. without consent.

§ 65. It shall not be lawful for the trustees or commissioners of any turnpike road, in altering or diverting the course of any part of the turnpike road under their care and management, to take or pull down any dwelling-house or other building, or in altering or diverting the course of any part of the turnpike road under their care and management, to deviate over any enclosed lands or grounds more than 100 yards from the line or course of such turnpike road, without the consent in writing of the owner or proprietor, or of the person or persons hereby authorised to act for and on behalf of the owner or proprietor of such dwelling-house or other building, or of such lands or grounds, or to take in or make use of any garden, yard, or paddock, or any park, planted walk, or avenue to a house, or any enclosed ground planted as an ornament or shelter to a house, or planted and set apart as a nursery for trees, or any part thereof respectively, without the like consent of the owner or proprietor thereof, or of the person or persons hereby authorised as aforesaid, first had and obtained; and it shall be lawful for all bodies politic, corporate, or collegiate, corporations aggregate or sole, tenants for life or in tail, husbands, guardians, trustees, feoffees in trust, committees, executors, administrators, and all other persons whomsoever, not only for or on behalf of themselves, their heirs and successors, but also for and on behalf of the person or persons entitled in reversion, remainder, or expectancy after them, and for and on behalf of their cestuique trusts, whether femes covert, infants, or issue unborn, lunatics, idiots, or other person or persons whomsoever, and to and for all femes covert who are or shall be seised of or interested in their own right, and to and for all and every person or persons whomsoever, who are or shall be possessed of or interested in any such lands, tenements, hereditaments, or premises, or who shall sustain any damage, to give their consent in writing to the said trustees or commissioners, for the taking or pulling down of such dwelling-house or other building, or the making such deviation of more than 100 yards as aforesaid, or the making use of such garden, yard, paddock, park, planted walk, avenue, or other such premises as aforesaid, and to contract with the said trustees or commissioners for the sale thereof, or for the satisfaction to be made for the same, or for such damages as aforesaid, and by conveyance, lease and release, or bargain and sale, to sell and convey unto the said trustees or commissioners all or any such lands, tenements, hereditaments, or premises, or any part thereof, for the purposes aforesaid; and all contracts, sales, and conveyances which shall be so made, shall be good, valid, and effectual to all intents and purposes, without fine or recovery, and shall be a complete bar to all estates tail and other estates, rights, titles, trusts, and interests whatsoever, any law, statute, usage, custom, or other matter to the contrary notwithstanding; and all such bodies politic, corporate, or collegiate, corporations aggregate or sole, tenants for life or in tail, husbands, guardians, trustees, feoffees, committees, executors, administrators, and all other persons, shall be and are hereby indemnified for what they or any

of them shall do by virtue or in pursuance of this act: Provided always, that nothing herein contained shall extend or be deemed, taken, or construed to extend to revoke, limit, abridge, alter, or vary any powers or authorities contained in any act or acts of parliament existing and in force at the passing of this act, for making, altering, or diverting any turnpike road or roads, or the course thereof, to be made, altered, or diverted and maintained under the authority of such acts, but the same powers and authorities shall and may be exercised and carried into effect by the trustees or commissioners appointed by such acts, fully and effectually: any thing herein contained to the contrary notwithstanding. 4 G. 4. c. 95.

§ 66. In all cases where the trustees or commissioners of any turnpike road shall turn or alter any part or parts of such turnpike road, or make any new road over and through any private grounds, or across any public or private footway, or shall take away any fence for widening or improving any such road, the said trustees or commissioners shall make or cause to be made and planted proper quickset hedges, or shall make or build proper fences or walls, on both sides of such new made road, or on the side upon which any such fence may be so removed as aforesaid, with sufficient ditches to the same, and sufficient posts and rails, or other fence, on both sides of such quickset hedges, to protect the growth thereof, so as effectually to guard and fence off the lands adjoining any such road from trespass or injury by horses, asses, cattle, sheep, or swine; and also proper gates, stiles, posts bridges, and arches, where necessary, out of any such road into the lands adjoining, and shall keep such fences so to be made in good order and repair, for and during the term of five years from the time that such fences shall have been made or set up; unless the owners or proprietors for the time being of any such land or ground shall agree with the trustees or commissioners, to keep such fences in repair, from an earlier period, for such time as aforesaid. (*a*) Trustees to fence roads.

By stat. 7 & 8 *G.* 4. *c.* 24. § 17. Where any part or parts of any turnpike road, or any bridges, arches, drains, or sewers lying in and upon such road, have been accustomed or ought to be repaired and maintained by any particular person, body politic or corporate, by reason of the tenure of any lands, tenements, or hereditaments, or otherwise, or by any county or any parish, or where any composition has been entered into or made in lieu thereof, all and every such part or parts of such road, and all such bridges, arches, drains, and sewers, shall from time to time be maintained and kept in repair by such person, body politic and corporate, county or parish, or such composition shall be paid, in such manner as the same were respectively maintained and kept in repair or paid before the passing the said recited acts, or of any local act for making or maintaining any turnpike road. 7&8 G. 4. c. 24. Lands liable to repair of roads, bridges, &c. to continue so.

(*a*) If trustees under an act turn a road through an enclosure, and make the fences at their own expense, and repair them for several years, they cannot be compelled to continue such repairs, unless there be a special provision in the act to that effect. *R.* v. *The Commissioners of Llandilo District*, 2 *T. R.* 232. In this case it was considered, that what is meant by a road is the surface over which the king's subjects have a right to pass, and that the owners of the land are bound to repair the fences on each side, unless otherwise provided by the act. Repair of the fences where a road has been diverted.

act, (viz. 5 G. 4. c. 126.) or shall
turned, shall respectively be a
liable to the repair of such new
road, or so much thereof as sha
pense of repairing such old roa
be exonerated by the widening
thereof; and if the several parti
the same shall be viewed by
county where such road shall b
and determined by them, in
just and reasonable; and from
the justices, the body politic
sons liable to repair such new
charges of presentments, indic
repairing the same; and if it sh
a gross sum, or an annual sum,
tic or corporate, or person or p
proportion of such new road to
the said justices may, with the
and also of the trustees or com
a meeting of such trustees or c
same accordingly; and the ord
shall be final and conclusive,
bodies politic or corporate, and

Damages and charges in cases of dispute to be settled by justices.

By § 69. Where by this act, (
c. 126.) or any act for maki
road, any damages or charge
be paid or recovered, in addi
any offence or offences, the am
in case of dispute respecting
tained, and determined by the
or before whom any offende
offence or offences; who is he

roads, or stat. 3 *G.* 4. *c.* 126., or this act, or any other act, authorised or empowered to make, build, do, execute, or perform; and all contracts or agreements in writing entered into by the said trustees or commissioners, or pursuant to any order of the said trustees or commissioners, by their clerk, surveyor, or other officer, with any workmen or other person or persons relating to any matter or thing to be done by virtue of any such act, or the said recited act or this act, shall be binding on the said trustees or commissioners and their successors, and upon all other parties who shall sign the same, and the heirs, executors, and administrators of such other parties; and actions and suits shall and may be maintained thereon by the said trustees or commissioners, and damages and costs recovered against the party or parties, or person or persons failing in the performance of such contracts or agreements respectively; and such sum or sums of money as shall be requisite for the due performance of such contract shall be the measure of the damages to be recovered in any action or suit against such party or parties, or person or persons so as aforesaid making default in fulfilling his, her, or their contract or agreement. 4 G. 4. c. 95.

IX. Powers to get Materials.

[3 G. 4. c. 126. § 97, 98, 99, 100, 101, 102, 103. — 4 G. 4. c. 95. § 56. — 7 & 8 G. 4. c. 24. § 18.]

By stat. 3 *G.* 4. *c.* 126. § 97. It is enacted, that it shall be lawful for the surveyor or surveyors to the trustees or commissioners of every turnpike road, and for all such persons as he or they shall appoint to search for, dig, gather, take, and carry away any materials for making or repairing any turnpike road, out of any common river or brook, (not being within fifty yards of any bridge, dam, weir, or jetty,) or out of or from any waste or common in any parish, hamlet, or place in which any part of such road may lie, or in any adjoining parish, hamlet, or place, and to haul and carry away any such materials when got over any common or waste lands, without paying any thing for such materials, and without being deemed a trespasser or trespassers; the said surveyor or surveyors, or other person or persons, filling up the pits or quarries, levelling the grounds, or sloping down the banks wherefrom such materials shall be taken, or railing or fencing off such pits or quarries, so that the same shall not be dangerous to any persons or cattle, and paying or tendering for the damage done by going through and over any enclosed lands or grounds for or with such materials, and such damages to be ascertained as hereinafter mentioned; and also that it shall be lawful for the said surveyor or surveyors, and such person or persons as he or they shall appoint, to search for, dig, get, gather, take, and carry away any such materials, in or out of the land of any person or persons where the same may be had or found, in any parish, hamlet, or place in which any part of such road shall lie or be situate, *or in any adjoining* parish, hamlet, or place, (not being a garden, yard, park, paddock, planted walk, or avenue to any house, or any piece of ground planted and set apart as a nursery for trees,) making or tendering such satisfaction for such materials, and for the damage done to the owners or occupiers of the lands where and from

3 G.4. c.126. Power to get materials from any river or brook, or from any common or waste lands without expense,

but filling up the pits, &c.

or from the lands of any person, not being garden ground, &c. on tendering satisfaction for damages;

damage done in landing on or goi
lands or grounds for or with suc
Any difference as to damages may be settled by two justices.
money as the said trustees shall j
any difference between such trust
or other persons appointed or e
owners and occupiers of such la
such payments and damages, any
for the county, riding, or place
such materials shall have been
days' notice thereof being given
other, shall hear, settle, and de
ments and damages, and the cost
termining the same.

Notice to be given before materials are taken from private lands, and two justices shall decide therein.
§ 98. It shall not be lawful
person or persons acting under t
gather, get, take, or carry awa
repairing any turnpike road, or f
as aforesaid, out of or from an
notice in writing, signed by the su
the owner or owners of the pre
are intended to be taken, or his
occupiers of the premises from w
to be taken, or left at the house
such owner or occupier, to appea
of the peace acting in and for the
the lands from whence such ma
shall lie, to show cause why such
from; and in case such owner,
pursuant to such notice, but shal
contrary, such justices shall, if th
surveyor or other person to dig,
such materials, at such time or ti
proper; and if such owner, age

pit or hole in any common or other lands or grounds, rivers or brooks as aforesaid, wherein such materials shall be found, the said surveyor shall forthwith cause the same to be sufficiently fenced off, and such fence supported and repaired during such time as the said pit or hole shall continue open, and shall, within three days after such pit or hole shall be opened or made, where no gravel, stones, or materials shall be found, cause the same forthwith to be filled up, levelled, and covered with the turf or clod which was dug out of the same; and where any such materials shall be found, within 14 days after having dug up sufficient materials in such pit or hole, if the same is not likely to be further useful, cause the same to be filled up, sloped down, or fenced off, and so continued; and if the same is likely to be further useful, the said surveyor shall secure the same by posts and rails, or other fences, to prevent accidents to persons or cattle; and in case such surveyor shall neglect to fill up, slope down, or fence off such pit or hole in manner and within the time aforesaid, he or they shall forfeit the sum of 20*s.* for every such default; and in case such surveyor shall neglect to fence off such pit or hole, or to slope down the same, as herein-before directed, for the space of six days after he or they shall have received notice for either of those purposes from any justice of the peace, or from the owner or occupier of such several ground, river, or brook, or any person having right of common within such common or waste lands as aforesaid, and such neglect and notice shall be proved upon oath before one or more of the said justices of the peace, such surveyor shall forfeit and pay any sum not exceeding 10*l.* nor less than 40*s.* for every such neglect, to be determined and adjudged by such justice or justices, and be laid out and applied in the fencing off, filling up, or sloping down such pit or hole, in such manner as the said justice or justices shall direct and appoint; which forfeiture, in case the same be not forthwith paid, shall be levied as other forfeitures are hereinafter directed to be levied. See § 141. and 142.

cause them to be filled up or fenced off.

Penalty for not filling up or fencing off, 20*s.*

Penalty for not fencing off, &c. in six days after receiving notice not more than 10*l.* nor less than 40*s.*

§ 100. It shall and may be lawful for the said trustees or commissioners to contract and agree with any person or persons whomsoever for the purchase or demise from him, her, or them of, and to hold any land or ground for the purpose of digging stones, gravel, and materials therefrom for the repair or use of the said road, and at any time afterwards to sell the land or ground so purchased by public auction or tender: Provided also, that the entering into any such contract or agreement as last aforesaid shall not be compulsory against any person or persons unwilling to enter into the same.

Power to contract for lands to get materials.

§ 101. If any person or persons shall take away any materials which shall have been gotten, dug, or gathered for the repair or use of any turnpike road, or any materials out of any quarry which shall have been made, dug, or opened for the purpose of getting materials for any turnpike road, before the surveyor of such road and the workmen employed for getting such materials shall have discontinued working therein for the space of six weeks, (except the owner or occupier of any private grounds, and persons authorised by such owner or occupier to get materials in such quarry for his own private use and not for sale,) every person so offending shall, for every such offence, forfeit and pay any sum not exceeding 5*l.*

Penalty on taking away materials before surveyor has discontinued digging for them, 5*l.*

3 G.4. c.126.

Repositories for materials to be provided.

Two justices shall settle any difference that may arise as to value.

§ 102. The trustees or commissioners of every turnpike road are hereby empowered to purchase or rent any piece or pieces of land or ground, not exceeding in any one place six yards square, on the sides of such road, as repositories for stone, gravel, and other materials for making or repairing the same; and in case any difference shall arise between such trustees or commissioners and the owner of such land or ground, with respect to the value thereof, or the necessity or propriety of taking such land or ground, the same shall be settled and determined by any two of H. M.'s justices of the peace acting in and for the county where the said land or ground shall be situated, in manner herein-before directed with respect to getting materials for the repair of any turnpike road.

Canal companies may lower their tolls on materials for repairing turnpike roads.

§ 103. It shall and may be lawful for the company of proprietors, or the trustee or trustees for the proprietors of any canal, or of any railway or tram-road, on which any flint, gravel, stone, or other materials for the repair of any turnpike road shall or may be conveyed, and they are hereby authorised and empowered to lessen and reduce the tolls and rates imposed by any act of parliament by which any such company shall be appointed, or any other act whatsoever, on the carriage of such flint, gravel, stone, or other materials carried on the said canal or railway, and to appoint such lower tolls and rates to be taken for the carriage and conveyance of the same as the said company or trustees shall think proper; and all such reduced tolls shall and may be collected, taken, and recovered by the same persons and means, and by and under the same powers, provisions, penalties, and forfeitures, as the original tolls might have been taken in case the same should not have been reduced; any act or acts of parliament, bye-law or ordinance, or trust deed, to the contrary notwithstanding.

4 G.4. c.95. Ground may be purchased for repository of materials within ten miles of the Royal Exchange.

By stat. 4 *G.* 4. *c.* 95. § 56. It shall be lawful for the trustees or commissioners of any turnpike road, and they are hereby empowered, to purchase or rent, with the consent of the owner or proprietor thereof, any piece or pieces of ground within ten miles of the *Royal Exchange*, as a repository for materials, such piece or pieces of ground to be of such extent as they may think proper, so as the same shall not exceed in the whole half an acre.

7 & 8 G.4. c.24. Minerals under road to belong to original proprietors of land.

By stat. 7 & 8 *G.* 4. *c.* 24. § 18. All mines of iron, tin, lead, copper, coal, and other minerals whatsoever, which shall be discovered or found in or under any land to be used for any turnpike road, shall be and they are hereby reserved to the person, body politic, corporate, or collegiate, who should have been seised of or entitled to the same in case the act for making such road had not been passed, with liberty for him, or his agents or servants, to dig for, mine, and work the same, in such manner as is usual for carrying on works of that kind in the county, district, or place where such mines shall be found, in as full and ample a manner as if the said land had not been taken and appropriated for the purposes aforesaid, so that in the working thereof no damage shall be done to such road or any part thereof.

X. Construction, Breadth, and Tire of Wheels.

[3 G. 4. c. 126. § 7. 9. 11. — 4 G. 4. c. 95. § 2. 5, 6, 7. 19.]

By stat. 4 *G.* 4. *c.* 95. § 2. It is enacted, that from and after the 1st day of *January*, 1826, the several nails of the tire or tires of the wheels of every waggon, wain, cart, or other such carriage used or drawn on any turnpike road, shall be so countersunk as not to project beyond one quarter of an inch above any part of the surface of such tire or tires; and if any waggon, cart, or other such carriage shall, from and after the said 1st day of *January*, 1826, be drawn or used on any turnpike road, with any wheel or wheels made, constructed, or being otherwise than as herein-before last described, the owner or owners thereof shall forfeit any sum not exceeding 40*s*., and every driver thereof any sum not exceeding 20*s*., for each and every time that such waggon, cart, or other such carriage shall be used or drawn on any turnpike road.

4 G. 4. c. 95. Nails of the tires of wheels of waggons, &c. to be so countersunk as not to project beyond ¼ of an inch above surface of tires.

Penalty on using them contrary hereto after Jan. 1. 1826.

By stat. 3 *G.* 4. *c.* 126. § 7. It is enacted, that from and after the 1st of *January*, 1823, the trustees or commissioners appointed by virtue or under the authority of any act made or to be made for making or maintaining any turnpike road, shall and they are hereby required to demand and take, or cause to be demanded and taken, for every waggon, wain, cart, or other such carriage, having the fellies of the wheels thereof of less breadth than four and a half inches at the bottom or soles thereof, or for the horse or horses or cattle drawing the same, one half more than the tolls which are or shall be payable for any carriage of the same description, having the wheels thereof of the breadth of six inches; and for every waggon, wain, cart, or other such carriage having the fellies of the wheels thereof of the breadth of four and a half inches, and less than six inches at the bottom or soles thereof, or for the horse or horses or other cattle drawing the same, one-fourth more than the tolls or duties which are or shall be payable on any carriage of the like description, having the wheels thereof of the breadth of six inches, by any act now in force, or hereafter to be passed, for making or maintaining any turnpike road, before any such waggon, wain, cart, or other carriage respectively, shall be permitted to pass through any turnpike gate or gates, bar or bars, where tolls shall be payable by virtue of any such acts.

3 G. 4. c. 126. After Jan. 1. 1823, waggons, &c. having the fellies of wheels of less breadth than four and a half inches to pay one half more than the toll payable on waggons, &c. having six-inch wheels.

Where the wheels shall be four and a half inches and less than six inches in breadth, one fourth more toll shall be paid.

§ 9. Where any waggon or cart shall have the sole or bottom of the wheels thereof rolling on a flat surface, and the nails of the tire of such wheels countersunk and be † cylindrical, (that is to say,) of the same diameter on the inside next the carriage as on the outside, so that when such wheels shall be rolling on a flat or level surface, the whole breadth thereof shall bear equally on such flat or level surface, and shall have the opposite ends of the axle-trees of such waggon, cart, or other carriage, so far as the same shall be inserted into the respective naves of the wheels thereof, horizontal, and in the continuance of one straight line, without forming any angle with each other, and in each pair of wheels belonging to such carriage, the lower parts when resting on the ground shall be at the same distance from each other as the upper parts of such wheels, it shall and may be lawful for the trustees or commissioners of any turnpike road, at a general meeting, if they shall think fit

Where waggons or carts are constructed in a particular manner, trustees may make order that the toll to be taken shall not be less than two-thirds of the full toll.

† *Sic.*

3 G.4. c.126. so to do, to make an order for every such waggon and cart to pass through any toll gate or bar under the superintendence of the trustees or commissioners making such order, upon paying only so much of the tolls and duties as shall not be less than two-thirds of the full toll or duty payable by any turnpike act, on such waggon, cart, or other carriage, and the horse or horses or cattle drawing the same.

Power to trustees to measure wheels.

§ 11. It shall be lawful for any trustee or commissioner of any turnpike road, and for every collector, or his deputy, or other person acting by or under the authority of the trustees or commissioners of any turnpike road, or of their lessee of tolls, to measure and examine, or cause to be measured and examined, the breadth and construction of the wheels of every waggon, cart, or other such carriage passing on such turnpike road; such measurement and examination to take place, if the trustee, commissioner, or other authorised persons making the same shall so require, previously to such waggon, cart, or other carriage being allowed to pass through any toll-gate or bar at which toll shall be payable; and if any owner or driver of any such waggon, cart, or other carriage, shall turn or drive out of the road, in order to avoid or evade the measuring of the wheels of such waggon, cart, or other carriage, or if any such owner, driver, or any other person, shall refuse to allow the wheels of any such waggon, cart, or other carriage to be measured, and the construction thereof examined, or shall attempt to pass through any toll-gate or bar before such measurement and examination shall be made (the same having been required), or shall in any way hinder or obstruct any such trustee or commissioner, or other authorised person, in making such measurement and examination, every such owner, driver, or other person so misbehaving, shall for every such offence forfeit any sum not exceeding *5l.*; and it shall not be lawful for any such waggon, cart, or other carriage, not permitted to be measured or examined as aforesaid, to pass along any turnpike road; and if any collector or his deputy, or any other person appointed to collect the tolls, shall allow the same to pass before such measurement and examinations shall be made (the same having been required), every collector, deputy, or other person, shall for every offence forfeit any sum not exceeding *5l.*

Penalty on obstructing measurement, not exceeding *5l.*

Penalty on toll-collector allowing waggons to pass before measurement, &c. not exceeding *5l.*

4 G.4. c.95. Where 13 G.3. c.84. in respect of tolls to be taken for carriages with wheels of certain description has not been acted on, the tolls shall be payable according to the scale herein specified.

By stat. 4 *G.* 4. *c.* 95. § 5. It is enacted, that where the trustees or commissioners of any turnpike road shall not, previously to the passing of stat. 3 *G.* 4. *c.* 126., have taken and collected on the road under their care and management the additional tolls on waggons, wains, carts, or carriages having the wheels thereof of less breadth or gauge than six inches from side to side at the bottom or sole thereof, and on the horses or beasts of draught drawing the same, directed to be taken and collected by stat. 13 *G.* 3. *c.* 84., and the particular or local act or acts of parliament in execution whereof the said trustees or commissioners shall act, shall not have provided a scale of tolls applicable to the road under their care and management, such trustees or commissioners shall, from and after the 1st day of *January*, 1824, continue to take, collect, and receive, for every waggon, wain, cart, or other such carriage having the fellies of the wheels thereof of less breadth or gauge than 4½ inches from side to side at the bottom or sole thereof, or for the horses or beasts of draught drawing the

same, the same tolls as are in and by such particular or local act or acts payable in respect of such waggons, wains, carts, or other such carriages; and for every waggon, wain, cart, or other such carriage having the fellies of the wheels thereof of the breadth or gauge of 4½ inches, and less than 6 inches at the bottoms or soles thereof, or for the horses or beasts of draught drawing the same, one-sixth less than the tolls which are or shall be payable for the same; and for every waggon, wain, cart, or other such carriage having the fellies of the wheels thereof of the breadth of six inches or upwards at the bottoms or soles thereof, or for the horse or horses drawing the same, one-third less than the tolls or duties which are or shall be payable for the same by any act or acts of parliament made for making, repairing, or maintaining any turnpike road. 4 G.4. c.95.

§ 6. Where any particular act or acts of parliament now in force, for the making, repairing, or maintaining any turnpike road, shall direct a higher or lower rate of toll or tolls to be collected and taken on any waggon, wain, cart, or other such carriage, or on the horse or horses drawing the same, regulated by or in respect of the greater or lesser breadth of the wheels of such waggon, wain, cart, or other such carriage, and where, in addition to the tolls received under such particular act or acts, the additional tolls in respect of the breadth of wheels authorised to be taken by stat. 13 *G.* 3. *c.* 84., shall not have been collected and imposed, it shall and may be lawful for the trustees or commissioners acting in execution of any such particular act or acts of parliament, from and after the 1st day of *January*, 1824, to continue to collect the tolls directed to be taken under the powers and provisions of such act or acts of parliament, in execution whereof they shall act, and they shall not impose the additional tolls authorised and required to be levied by the said recited act on waggons, wains, carts, or other such carriages having the fellies of the wheels thereof of less breadth than six inches. Where there is a scale of tolls adapted to the width of wheels, and additional tolls under 13 G.3. c.84. not collected, the scale of tolls imposed by the local act to continue.

§ 7. Provided always, that in every case where the tolls authorised and empowered to be taken on any turnpike road shall be in the hands of the trustees or commissioners of such road, and not leased or let to farm, but collected on their account, the trustees or commissioners of such road shall, in case such tolls were increased by the provisions of the said recited act, within 14 days after the passing of this act reduce the said tolls, and fix the amount thereof according to the provisions of this act; and in case the tolls collected and taken on any turnpike road shall be leased and let to farm, it shall and may be lawful for the trustees or commissioners of such road to compound and agree with the farmer or lessee of the said tolls for reducing the same, and fixing the amount thereof according to the provisions of this act; and in each of the said cases the provisions of this act with regard to tolls herein-before next mentioned shall then commence and take effect at the time of such reduction, and shall not be postponed to the said first day of *January*, 1824. In case the tolls shall not be leased, or if leased by agreement with the lessee, they may be reduced before the 1st of January, 1824.

§ 19. Nothing in stat. 3 *G.* 4. *c.* 126. or this act contained, relating to the breadth of the wheels of carriages, or to the regulations of weight, or to the tolls payable in respect of the wheels, or of the weight of carriages, shall extend or be construed to extend to any chaise marine, coach, landau, berlin, barouche, phaeton, soci- Breadth of wheels, or regulations as to weight, &c. not to extend to coaches, &c.

4 G.4. c. 95. able, chariot, calash, hearse, break, chaise, curricle, gig, chair, or taxed cart, or any cart not drawn by more than one horse or two oxen.

XI. Weights of Carriages.

[3 G. 4. c. 126. § 12, 13, 14, 15, 16, 17, 18, 19, 20. — 4 G. 4. c. 95. § 8, 9, 10. 16, 17. 20, 21. 89.]

3 G.4. c.126. Regulating the weights of waggons, &c.

By stat. 3 *G.* 4. *c.* 126. § 12. For regulating the weights to be allowed to waggons, wains, carts, and other carriages, it is enacted, that the weights hereafter next specified shall be allowed to every waggon, wain, cart, or other such carriage, (that is to say,) to every waggon, wain, or other four-wheeled carriage, having the fellies of the wheels thereof of the breadth of nine inches at the bottom or soles thereof, together with the loading of such carriage, six tons ten hundred weight in summer, and six tons in winter; to every cart or other such two-wheeled carriage, having the fellies of the wheels thereof of the like breadth, together with the loading of such carriage, three tons ten hundred weight in summer, and three tons in winter; to every waggon, wain, or other such four-wheeled carriage, having the fellies of the wheels thereof of the breadth of six inches and less than nine inches at the bottom or soles thereof, together with the loading of such carriage, four tons fifteen hundred weight in summer, and four tons five hundred weight in winter; to every cart or other such two-wheeled carriage, having the fellies of the wheels of the breadth last mentioned at the bottom or soles thereof, together with the loading of such last-mentioned carriage, three tons in summer, and two tons fifteen hundred weight in winter; to every waggon, wain, or other such four-wheeled carriage, having the fellies of the wheels thereof of the breadth of four inches and a half and less than six inches at the bottom or soles thereof, together with the loading of such carriage, four tons five hundred weight in summer, and three tons fifteen hundred weight in winter; to every cart or other such two-wheeled carriage, having the fellies of the wheels thereof of the breadth last-mentioned at the bottom or soles thereof, together with the loading of such carriage, two tons twelve hundred weight in summer, and two tons seven hundred weight in winter; to every waggon, wain, or other such four-wheeled carriage, having the fellies of the wheels thereof of a less breadth than four inches and a half at the bottom or soles thereof, together with the loading of such carriage, three tons fifteen hundred weight in summer, and three tons five hundred weight in winter; to every cart or other such two-wheeled carriage, having the fellies of the wheels thereof of the breadth last-mentioned, together with the loading of such carriage, one ton fifteen hundred weight in summer, and one ton ten hundred weight in winter; and for the several purposes of this act, it shall be deemed summer from the 1st day of *May* to the 31st day of *October*, both days inclusive, and winter from the 1st day of *November* to the 30th day of *April*, both days inclusive.

See form (No. 2.)

Additional weights for carriages built with springs.

§ 13. To every caravan, or other four-wheeled carriage used for the conveyance of goods, and built and constructed with springs, shall be allowed the weights following; that is to say, for every such carriage three tons and fifteen hundred weight in winter, and four tons five hundred weight in summer.

§ 14. To each and every dray with two wheels of not less than four inches and a half in breadth, and drawn by not more than three horses, and used in *London*, or within the bills of mortality, there shall be allowed at all times of the year, together with the loading of such dray, the full weight of two tons sixteen hundred weight; any thing in this or any act, &c. to the contrary notwithstanding. 3 G.4. c.126.

Two-wheeled drays drawn with three horses allowed 2 tons 16 cwt.

§ 15. It shall be lawful for all trustees and commissioners appointed by or under any act or acts of parliament, for the making or maintaining of any turnpike road, or for any person or persons authorised by them, and they are hereby empowered and required to receive, take, and demand, over and above the tolls payable by any act or acts of parliament now in force, or hereafter to be passed, the following sums of money, as additional toll for every hundred weight of one hundred and twelve pounds to the hundred, which any waggon, cart, or other such carriage, together with the loading thereof, shall weigh at any weighing engine over and above the weights herein-before allowed to each of them respectively; (that is to say,) for the first and second hundred of such overweight, the sum of *3d.* for each hundred; for every hundred of such overweight above two hundred and not exceeding five hundred, the sum of *6d.*; for every hundred of such overweight above five hundred and not exceeding ten hundred, the sum of *2s. 6d.*; and for every hundred of such overweight exceeding ten hundred, the sum of *5s.*; which said additional sums or tolls hereby granted and made payable at any weighing engine, shall and may be levied and recovered in any of the cases aforesaid, in such manner as any other toll or duty payable on the road on which any such weighing engine shall be erected, is or shall be by law to be levied and recovered, and the monies arising therefrom shall be applied to the repairs of the turnpike road on which the same shall be recovered. *See* § 39.

Additional tolls for overweight.

§ 16. Provides, that the regulations of weight herein-before mentioned and provided shall not extend, or be deemed or construed to extend, to any waggons, carts, or other carriages *carrying only manure or lime for the improvement of land*, or any hay, straw, fodder, or corn unthrashed, except hay, straw, fodder, or corn carried for sale; nor to any waggons, carts, or other carriages, carrying only one tree or one log of timber, or one block of stone, or one cable or rope; nor shall the said regulations of weight extend to any chaise marine, coach, berlin, barouche, sociable, chariot, calash, hearse, break, gig, chaise, or taxed cart.

Regulations as to weight not to extend to manure, &c.

§ 17. And whereas many persons may at the time of passing this act be farmers or contractors for the tolls arising or payable on turnpike roads, and for tolls and penalties for overweight, and whose contracts will not expire until after the 1st of *January*, 1823; for remedy whereof, and for protection of such lessees or contractors, it is enacted, that in case any lessee or lessees, farmer or farmers, contractor or contractors for any toll or tolls, and penalties for overweight, payable to any trustees or commissioners appointed by virtue of any act of parliament for making, repairing, or amending turnpike roads, whose contract will not expire until after the 1st of *January*, 1823, shall, by reason of this act, be desirous of being discharged from his, her, or their contract or contracts, so far as regards such tolls or penalties for overweight,

Contractors of tolls may be released from their contracts, so far as regards tolls or penalties for overweight, on giving notice to the treasurer or clerk of the trustees by September 1. 1822.

3 G. 4. c. 126.

and of such his, her, or their desire shall, on or before the 1st of *September*, 1822, give notice in writing to the treasurer or clerk of any such trustees, then and in every such case all such farmers, lessees, or contractors shall, from and after the said 1st of *January*, 1823, be released and discharged from their respective contracts, so far as the same relate to such tolls or penalties for overweight; and all and every such contracts shall from thenceforth cease and be null and void as to the residue of the term or time then to come and unexpired therein, so far as such contracts relate to such tolls or penalties for overweight; any thing in such leases or agreements to the contrary notwithstanding.

New contracts may be made with contractors.

§ 18. In case any such lessee or lessees, farmer or farmers, contractor or contractors, shall give such notice of determining his, her, or their contract as herein-before mentioned, then and in every such case it shall be lawful for such trustees or commissioners, if they think fit, to make any new contract or contracts with such lessee or lessees, farmer or farmers, contractor or contractors, or to make any compensation to him, her, or them, in respect of such tolls or penalties for overweight, or to cause the said tolls or penalties for overweight to be re-let on a day and at a place to be by them appointed, of which one month's notice at least shall be given, and thereupon to proceed to re-let the same, and to re-let the same for the best price they may then be enabled to obtain for the same, without being compelled to put up the said tolls or penalties for overweight at the sum at which they were last let, or to have any other meeting for the letting thereof. See stat. 4 *G.* 4. *c.* 95. § 8, 9. *post.*

Trustees not to make composition for overweight.

§ 19. It shall not be lawful for the trustees or commissioners of any turnpike road, their lessee or lessees, collector or collectors, or other officers, to make any composition for any additional tolls or duties for or in respect of the overweight, or in any other manner as to the weight which any waggon, wain, cart, or carriage shall carry or weigh, any law to the contrary thereof notwithstanding; but every contract and agreement for such composition for overweight shall be null and void to all intents and purposes whatsoever; and every lessee, collector, or other officer entering into or agreeing to any such composition, and every person or persons with whom any such composition or agreement shall be made or entered into, shall, for every such composition or agreement, and for every abatement of toll for overweight in consequence thereof, forfeit the sum of 50*l.* to any person or persons suing for the same.

Penalty, 50*l.*

Penalty on unloading goods, &c. to evade toll, or obstructing the weighing, 5*l.* on the owner of the waggon, &c. and not exceeding 40*s.* on the driver.

§ 20. If any person or persons shall unload, or cause to be unladen, any goods, wares, or merchandise, from any cart, waggon, or other carriage, at or before the same shall come to any turnpike gate or weighing engine erected by virtue or in pursuance of this or any other act made for the repair or preservation of any turnpike road, or shall load or lay upon such carriage, after the same shall have passed any such turnpike or weighing engine, any goods, wares, or merchandise, taken or unladen from any horse, cart, or other carriages belonging to or hired or borrowed by the same waggoner or carrier, in order to avoid the payment of the said respective duties payable for overweight: or if any person shall so unload in order to carry considerable quantities

of goods through any turnpike gate, or by any weighing engine in one and the same day, and thereby pay less toll at such turnpike gate or weighing engine than would have been paid if such goods, wares, or merchandise had not been so unladen; or if any driver of any waggon or cart shall not wait a reasonable time whilst any other carriage shall be weighed, which shall have come to the weighing engine before the carriage of which he shall be the driver; or if the driver of any waggon or cart shall refuse or delay to remove or drive any such waggon or cart from the weighing machine, in order by such neglect or refusal to impede or delay the weighing of any other waggon or cart, or shall turn or drive out of any road, in order to avoid or evade the weighing of any waggon or cart; each and every person so offending in any of the cases aforesaid, and being thereof lawfully convicted before one or more justice or justices of the peace for the limit where the offence shall be committed, upon the oath of one or more credible witness or witnesses, shall forfeit the sum of 5*l*., to be levied upon the goods and chattels of the owner of such cart, waggon, or other carriage; and each and every driver, not being the owner of such waggon or carriage, so offending, and being thereof convicted as aforesaid, shall forfeit any sum not exceeding 40*s*., and in case of nonpayment thereof, shall be committed to the house of correction for any time not exceeding two calendar months. 3 G4. c.126.

By stat. 4 *G.*4. *c.*95. § 8. After reciting, that whereas many persons may at the time of passing of this act be farmers or contractors for the tolls arising or payable on turnpike roads, and for tolls and penalties for overweight, and whose contracts will not expire until after the 1st day of *January*, 1824; for remedy whereof, and for protection of such lessees or contractors, it is enacted, that in case any lessee or lessees, farmer or farmers, contractor or contractors for any toll or tolls arising or payable on any turnpike road, or for any tolls and penalties for overweight, payable to any trustees or commissioners appointed by virtue of any act of parliament for making, repairing, or amending turnpike roads, whose contract will not expire until after the 1st day of *January*, 1824, shall, by reason of this act, be desirous of being discharged from his, her, or their contract or contracts, so far as regards such tolls arising and payable on any turnpike road, or any tolls and penalties for overweight, and of such his, her, or their desire, shall, on or before the 1st day of *September*, 1823, give notice in writing to the treasurer or clerk of any such trustees or commissioners, then and in every such case all such farmers, lessees, or contractors shall, from and after the said 1st day of *January*, 1824, be released and discharged from their respective contracts, so far as the same relate to such tolls arising and payable on any turnpike road, or to such tolls or penalties for overweight; and all and every such contract shall thenceforth cease, and be null and void, as to the residue of the term or time then to come and unexpired therein, so far as such contracts relate to such tolls arising and payable on any turnpike road, or to such tolls and penalties for overweight; any thing in such leases or agreements to the contrary notwithstanding. 4 G.4. c.95. Contractors of tolls may be released from their contracts so far as regards tolls or penalties for overweight, on giving notice to the treasurer or clerk of the trustees by September.

§ 9. Provided also, that in case any such lessee, farmer, or contractor, shall give such notice of determining his contract, then and in every such case it shall be lawful for such trustees or com- New contracts may be made with contractors.

4 G.4. c.95.

missioners, if they think fit, to make any new contract with such lessee, farmer, or contractor, or to make any compensation to him, in respect of such tolls payable on any turnpike road, or of the said tolls or penalties for overweight, or to cause the said tolls, and the tolls or penalties for overweight, to be re-let on a day and at a place to be by them appointed, of which one month's notice at least shall be given, and thereupon to proceed to re-let the same, and to re-let the same for the best price they may then be enabled to obtain for the same, without being compelled to put up the said tolls, or the said tolls or penalties for overweight, at the sum at which they last let, or to have any other meeting for the letting thereof. See § 18. p. 944.

No exemption by former acts to be claimed, unless carriages with 4½-inch fellies are used.

§ 10. No person shall, by virtue of the said act, or this or any other act, have the benefit of any exemption from toll, or penalties for overweight, or to pay less toll for or in respect of any waggon, wain, cart, or other carriage, or the horses or beasts drawing the same, and carrying any particular kind of goods, than other carriages of the like nature carrying other goods ought to pay, unless such waggon, wain, cart, or other carriage, in respect of which the exemption shall be claimed shall have the sole of the bottom of the fellies of the wheels thereof of the breadth or gauge of 4½ inches or upwards, (other than and except carts and carriages employed in carrying corn or grain in the straw, hay, straw, fodder, dung, or lime for the improvement of land, or other manure, or any plough, harrow, or implements of husbandry only,) but the tolls imposed by any act, together with the additional tolls required to be taken for or in respect of every such waggon, wain, cart, or other carriage, having the sole or bottom of the fellies of the wheels thereof of less breadth or gauge than 4½ inches as aforesaid, and for horses or beasts of draught drawing the same, and the additional tolls or penalties for overweight (except as before excepted), shall be paid in the same manner, to all intents and purposes, as if no exemption or less toll had been allowed, and as fully as all other waggons, wains, carts, and carriages, and horses drawing the same, ought to pay, which are not entitled to any exemption, or to pay a less toll than other waggons, wains, carts, and carriages.

Loaded carts used on railways and tramroads not to be drawn on turnpike roads. Penalty.

§ 16. If any waggon or cart, built or constructed to be and usually used on any railway or tramroad, shall be drawn or pass loaded on any turnpike road, out of and away from such railway or tramroad, for the distance of more than 100 yards, the owner or proprietor of every such waggon or cart shall forfeit and pay the sum of 40*s*., and the driver thereof, not being the owner, the sum of 20*s*. for each and every time such waggon or cart shall be so drawn and pass.

Exemptions from toll not to extend to the tolls for overweight, unless such tolls are also specially exempted.

§ 17. In case where any exemption from toll shall be claimed or allowed under the provisions of stat. 3 *G*. 4. *c*. 126., or this act, or any other act or acts for repairing and maintaining any turnpike road, such exemption shall not extend to or be allowed for the additional tolls imposed by the said recited act, and directed to be taken for every cwt. of 112lbs. to the hundred, which any waggon, cart, or other such carriage, together with the loading thereof, shall weigh at any weighing engine, over and above the weights in and by the said recited act allowed to each of them respectively, unless the waggon, wain, cart, or other such carriage

in respect of which the exemption shall be claimed, shall likewise be, by the said recited act or this, or some other act or acts, specially exempted from such additional tolls for overweight; but in all cases (where not specially exempted) the said additional tolls shall be paid, and only the original toll allowed. 4 G.4. c.95.

§ 20. The trustees or commissioners of the several turnpike roads within ten miles of the cities of *London* and *Westminster*, and the borough of *Southwark*, may and they are hereby empowered, at any meeting or meetings to be held for the purpose, (of which meeting or meetings, and the purposes thereof, fourteen days' notice shall be given,) to lower the several additional tolls by the said recited act directed to be taken for overweight, in such manner as to them shall seem fit and convenient, and from time to time to take such reduced tolls for overweight as shall be fixed and agreed on at such meeting or meetings. Trustees or commissioners within 10 miles of London may reduce tolls for overweight.

§ 21. The regulations of weight in stat. 3 *G.* 4. *c.* 126. or this act mentioned and provided, shall not extend to any waggon, wain, cart, or other carriage carrying only one block, plate, roll, or vessel of iron or other metal, or compounded of any two or more metals, cast, wrought, or united in one piece. Regulations of weight not to extend to one piece of metal.

§ 89. And whereas the schedule (No. 2.) intituled, "Table of weights allowed in winter and summer to carriages directed to be weighed (including the carriage and loading)" has been found defective; it is enacted, that the said schedule shall be and the same is hereby repealed; and the schedule (No. 1.) annexed to this act shall be made use of instead thereof. *See* Form, No. 2. *post.* Schedule No. 1. (table of weights) to be used instead of schedule No. 2. of recited act.

XII. Weighing Engines to be erected, with additional Tolls for Overweight.

[3 G. 4. c. 126. § 21, 22, 23, 24, 25.]

By stat. 3 *G.* 4. *c.* 126. § 21. It is enacted, that it shall and may be lawful for the said trustees or commissioners, at any of their respective meetings, if they think proper, to order and cause to be built and erected, at any of the turnpikes or toll-gates on the roads under their care and management, or at such distance therefrom as they shall think expedient, one or more crane or cranes, machines or engines, with a suitable house or other building thereto, proper for the weighing of waggons or carriages conveying any goods or merchandise whatsoever, and by notice on a board for that purpose, to be put up at every such weighing machine, to order and direct all and every such waggons or carriages which shall come within 100 yards of any crane, machine, or engine, to be weighed, together with the loading thereof. See Form (No. 1.) 3 G.4. c.126. Power given for erecting weighing machines.

§ 22. Enacts, that the keeper of every toll gate or bar where any weighing engine shall be erected, or any other person appointed or to be appointed by the trustees or commissioners, or by their lessee or lessees, to the care of such weighing engine, shall and is hereby required to weigh all such waggons, carts, and other carriages liable to be weighed, which shall pass loaded through such gates or bars respectively, and which he shall believe to carry greater weights than are allowed to pass without paying Where weighing engines are erected, toll-keepers to weigh waggons, &c. of greater weight than allowed, and not suffer them to pass without

3 G. 4. c. 126.

paying the additional toll.

the said additional toll: and if any collector or person so appointed shall permit any such waggon, cart, or other carriage to pass by or through any such toll-gate with greater weights than are hereby allowed, without weighing the same and receiving such additional tolls, he shall for every such offence forfeit the sum of 5*l.*; and if the owner or driver of any waggon, cart, or other carriage shall refuse to allow the same to be weighed, or shall resist any gate-keeper or toll-collector in weighing the same, every owner or driver so offending shall forfeit any sum not exceeding 5*l.*

Penalty on obstructing the weighing not exceeding 5*l.*

Trustees, &c. may cause waggons, &c. to return to be weighed, in case of neglect of duty of the collector.

§ 23. And in order to detect the said collector or receiver in any fraudulent contrivance or neglect of duty in the matters aforesaid, it is enacted, that it shall be lawful for any trustee or commissioner, or surveyor of every turnpike road, if he shall suspect any such connivance or neglect, to cause any waggon, cart, or other carriage which shall have passed through any toll-gate where any weighing engine shall be erected, and shall not have passed above three hundred yards beyond such toll-gate, to return to such weighing machine, and be there weighed with the loading which passed through such toll-gate in the presence of such trustee or commissioner or surveyor, upon requiring the driver thereof to drive such carriage back to such weighing engine, and upon paying or tendering to him the sum of 1*s.* for so doing; which sum of 1*s.* shall be returned to the person paying the same, if upon weighing such carriage and the loading thereof it shall be found above the weight hereby allowed.

Surveyors to make convenient places for turning carriages where weighing engines are erected.

§ 24. For the better enforcing the authority of this act, it is enacted, that the surveyors of every turnpike road shall, and they are hereby authorised and required to make convenient places for turning such carriages upon every such turnpike road where any weighing engine shall be erected, within 300 yards of such toll-gate, on each side thereof, if the ground will admit of the same; and if the driver of any such carriage, being so requested to return with his carriage to such weighing engine, shall neglect or refuse so to do, he shall forfeit any sum not exceeding 5*l.*; and it shall and may be lawful for any peace officer or other person or persons being then present, upon such neglect or refusal, to drive and take such carriage back to such weighing engine, in order to be weighed as aforesaid.

Drivers refusing to return to forfeit not exceeding 5*l.*

Where turnpike roads on different trusts meet, trustees to fix on some place for erecting a weighing engine, and proportion the expense, &c.

§ 25. When two or more turnpike roads meet at or near the same place, it shall be lawful for the trustees or commissioners of such turnpike roads respectively, at a meeting to be held for that purpose, to fix upon some convenient place to erect a weighing engine upon, which will accommodate all such turnpike roads, and by agreement amongst themselves at such meeting to proportion the expenses which may attend the making, erecting, maintaining, and keeping in repair such weighing engine, and likewise the money arising from forfeitures to be incurred for overweight at such weighing machine, amongst all such turnpike roads, in such manner as to them shall appear just and reasonable. See Form (No. 3.)

XIII. Exemptions from Tolls.

[3 G. 4. c. 126. § 26, 27, 28, 29, 30. 32, 33. 35, 36. — 4 G. 4. c. 16. § 1, 2. — 4 G. 4. c. 95. § 23, 24. 26.]

3 G.4. c.126. Exemptions from toll on manure, &c. contained in any act, to be in force notwithstanding the same should be carried into or brought from an adjoining parish.

By stat. 3 *G.* 4. *c.* 126. § 26. It is enacted, that in every case in which under any act or acts of parliament relating to any turnpike road, there is an exemption from toll or duty in respect of any horse, mule, ass, ox, waggon, cart, or other carriage, drawing or carrying any dung, mould, marl, or compost of any nature or kind soever, for improving or manuring the land, or hay, straw, or any other fodder for cattle, or materials for repairing any turnpike road or highway, such exemption shall be deemed to extend in respect of every such waggon, cart, or other carriage, and also in respect to the cattle drawing the same, going empty or loaded only with implements necessary for more convenient carriage, or loading or unloading such lading, or returning empty, or with such implements as aforesaid, having been so laden, notwithstanding the said waggon, cart, or other carriage shall, for the purpose aforesaid, go to or return from any parish or place in which the said turnpike does not lie.

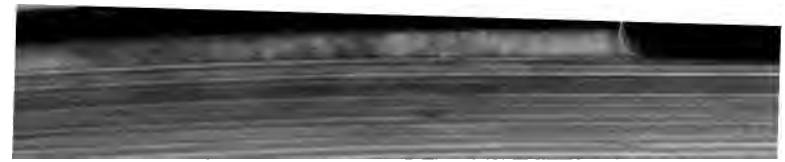
Tolls payable on waggons going empty for road materials, &c. to be repaid when returning laden.

§ 27. For the preventing of frauds on toll-collectors by waggons, carts, or other carriages passing empty, or loaded only with implements necessary for the more convenient carriage of, or for loading or unloading manure, or materials for the repair of any turnpike road or highway, through turnpike gates, under pretence of going for such manure or materials, the owner or driver of every such empty waggon, cart, or carriage, claiming the same exemptions, or any of them, shall in all cases pay the toll in respect of such waggon, cart, or other carriage, before the same shall be permitted to pass through such turnpike gate; and the collector of such toll shall thereupon deliver to such owner or driver a ticket, to be marked "*manure exemption*," or "*road materials*," (as the case may be), with the name of the gate and the date when delivered, and the amount of the toll so paid; all which sum or sums so paid shall be repaid to the owner or driver of such waggon, cart, or other carriage, upon his or their returning with such waggon, cart, or other carriage so laden as aforesaid, and producing such ticket; and every collector of such toll refusing to give such ticket on receiving the toll, or refusing or neglecting to return the same toll upon the return of such waggon, cart, or other carriage so laden, and re-delivery of the "*manure exemption*" or "*road materials*" ticket (as the case may be,) shall for every such offence forfeit to the owner of such waggon, cart, or other carriage, a penalty of not more than *5l.*, upon conviction thereof before one or more justice or justices of the peace for the county, riding, division, or place where such offence shall be committed, upon the oath of one credible witness.

Penalty for not returning such tolls not exceeding *5l.*

Toll not to be taken on account of baskets, &c. being in waggons, &c. laden with manure, &c.

§ 28. Enacts, that the owner or driver of any waggon, cart, or other carriage laden with manure for land, or materials for any turnpike road or highway, passing through any turnpike gate, or otherwise passing on or across any turnpike road, shall not be liable to pay any toll, nor shall any toll be demanded for such carriage so laden, or the cattle drawing the same, by reason only



§ 30. Where any horse or horses shall pass through any turnpike gate on any road, not drawing any carriage, and a toll shall be paid on such horse or horses at such turnpike gate, and the same horse or horses shall return drawing any carriage on the same day, or within eight hours after their first passing through such gate, the toll paid on such horse or horses on their originally passing shall be deducted from the toll payable on the same when drawing the carriage to which they shall be attached on their return, so that no higher toll shall in the whole be taken than if such horse or horses had in the first place passed through such turnpike gate drawing the said carriage. 3 G.4. c.126. Horses having passed through a gate, and returning drawing a carriage, the toll paid on the horses to be deducted.

§ 32. No toll shall be demanded or taken by virtue of this or any other act or acts of parliament, on any turnpike road, for any horses or carriages attending H. M. or any of the royal family, or returning therefrom; or of or from any person or persons, for any horse or horses or other beast or cattle, or for any waggon, wain, cart, or other carriage employed in carrying or conveying, or going empty to fetch, carry, or convey, or returning empty from carrying or conveying, having been employed only in carrying or conveying, on the same day, any stones, bricks, timber, wood, gravel, or other materials for making or repairing any turnpike road or public highway, or for building, rebuilding, or repairing any present or any future bridge or bridges on any such road or public highway; [or of or from the surveyor of any turnpike road when engaged in executing or proceeding to execute, within the limits of his own or any adjoining trust, the powers of this or any other act or acts of parliament for repairing, maintaining, or relating to any turnpike road;] or for any horse, beast, or other cattle or carriage employed in carrying or conveying, having been employed only in carrying or conveying on the same day any dung, soil, compost, or manure (save and except lime) (*a*), for Exemptions from tolls: horses and carriages attending H.M., &c. or conveying materials for roads and bridges, repealed by 4 G.4. c.95. § 25. or manure (except lime);

producing a ticket, should be permitted to repass free with the same cattle, *or* carriage." The Court of C. P. held, that the toll having been paid by the coachman on passing for horses drawing a stage-coach, a second toll could not be demanded for the same horses repassing, though with a different coach and different coachman, but belonging to the same proprietor. *Norris* v. *Poate*, 3 *Bingham's Rep.* 41.

In *Fearnley* v. *Morley*, 5 *B. & C.* 25. The court of K. B. recognised the authority of the foregoing case of *Norris* v. *Poate*, and under similar circumstances came to a like decision, *viz.* that no second toll was payable in respect of the same horses passing through the same gate, although with a different coach and passengers. The act in this case, as in *Norris* v. *Poate*, having imposed the toll on the horses, and not upon the coach.

And in *Jackson* v. *Curwen*, 5 *B. & C.* 31. The Court said, "It is an established rule that where the toll is imposed *upon carriages* drawn by horses; and there is a clause of exemption for all persons repassing on the same day with the same horses and carriage, or with the same horses or carriage, and the same carriage returns the same day drawn by different horses, no second toll is payable. And where the toll is imposed *upon the horses* drawing the carriage with a similar clause of exemption, no second toll is payable if the same horses return with a different carriage. See also *Chambers* v. *Williams*, *ibid.* p.36. (in note.)

(*a*) By stat. 4 *G.*4. *c.*16. § 1. after reciting stat. 3 *G.*4. *c.*126. and "whereas doubts have arisen whether, under the provisions of the said act, *lime for improving land*, although exempted from toll by several local acts, may not, by the said recited act, be made chargeable with toll:" for removing such doubts, it is enacted, "that nothing in the said act shall extend or be construed to extend to enable any collector or collectors of tolls authorised to be taken under any local act or acts of parliament, for horses or carriages employed in carrying or conveying lime for the 4 G.4. c.16. Recited act not to authorise collectors of tolls to take toll for lime, unless autho-

3 G.4. c. 126.

improving lands; or any ploughs, harrows, or implements of husbandry (unless laden also with some other thing not hereby exempted from toll); or any hay, straw, fodder for cattle, and corn in the straw, which was grown or arisen on land or ground in the occupation of the owner of any such hay, straw, fodder, or corn in the straw, potatoes, or other agricultural produce, and which has not been bought, sold, or disposed of (*a*), nor is going to be sold or disposed of; or for any horses or other beasts employed in husbandry going to or returning from plough or harrow, or to or from pasture or watering place (*b*), or going to be or returning from being shoed or farried, such horses or other beasts not going or returning on those occasions *more than two miles on the turnpike road on* which the exemption shall be claimed; or of or from any person or persons going to or returning from his, her, or their proper parochial church or chapel, or of or from any other person or persons going to or returning from his, her, or their usual place of religious worship tolerated by law, on *Sundays*, or on any day on which divine service is by authority ordered to be celebrated; or of or from any inhabitant of any parish, township, or place, going to or returning from attending the funeral of any

or agricultural produce not sold or for sale; or for horses employed in husbandry, &c.; or for going to or returning from church; or for attending funerals;

rised by some local act.

Abatement to be made in cases of contract for tolls, where toll on lime was considered to be payable, or contract to be void after the expiration of a month.

improvement of land, to take or demand any toll for lime as aforesaid, other than such as might have been demanded and taken under the authority of any such local act, previous to the passing of the said recited act.

§ 2. Provided, that in all cases where any lease or contract shall have been made since the passing of the said recited act, by any trustees of any turnpike road or roads to or with any collector or collectors of tolls, for letting to farm any tolls to be received or taken upon any such road or roads whereon a toll on lime for improving land was payable, or considered to be payable, under the said recited act, at the time of making or entering into any such lease or contract, it shall and may be lawful to and for the said trustees to make such fair and reasonable abatement in the rent payable by such collector or collectors during the unexpired residue of such lease or contract as aforesaid, as shall be agreed upon by and between the said trustees and such collector or collectors as aforesaid, or such lease or contract shall, at the expiration of one calendar month after the passing of this act, cease become absolutely void, upon payment, but not otherwise, by such collector or collectors, or his, her, or their heirs, executors, or administrators, of all rent and arrears of rent, or sum or sums of money which shall be due and payable by him, her, or them, at and up to the end of the said calendar month.

(*a*) These exemptions in favour of agriculture are to be beneficially construed. *Hickinbotham* v. *Perkins*, 3 *Moore*, 185. 8 *Taunt.* 795. S. C.

(*b*) "*Going to or from pasture or watering place.*" In a local act imposing tolls on horses, &c., "cattle going to or returning from pasture," and "horses attending cattle returning from pasture," were exempted; it was held, that a horse ridden by the owner of the cattle at pasture, in order to *fetch* them from pasture, did not come within either of the exceptions. *Harrison* v. *Brough* 6 *T. R.* 706.

If this were allowed to be an exemption, it would open a great door to fraud on the turnpike men. *Per* Ld. *Kenyon* C. J., S. C.

"*A person going to or returning from his proper parochial church or chapel.*" In a local act, 37 *G.* 3., was a provision that no toll should be demanded or taken for the passage of any person or persons residing in any township or parish in which the roads lay, "going to or returning from their proper parochial church, chapel, or other place of religious worship on *Sundays*." The court of K. B. held the word "parochial" to extend over the whole clause, and that, therefore, a dissenter was not within the exemption in going to, or returning from, his proper place of religious worship, situated out of the parish in which he resided. *Lewis* v. *Hammond*, 2 *B.* & *A.* 206.

It will be observed that a member of the established church is liable to toll out of his parish; the dissenter not. See the next clause, and Mr. Dobson's observations on these acts, p. 21, 22.

person who shall die and be buried in the parish, township, or hamlet in which any turnpike road shall lie; or from any rector, vicar, or curate going to or returning from visiting any sick parishioner, or on other his parochial duty within his parish; or for horses, carts, or waggons employed only in carrying or conveying any vagrant sent by a legal pass, or any prisoner sent by any legal warrant, or returning empty after having been so employed; or for any horses or carriages, of whatever description, employed or to be employed in conveying the mails of letters and expresses under the authority of H. M.'s postmaster-general, either when employed in conveying, fetching, or guarding such mails or expresses, or in returning back from conveying or guarding the same; or for the horse or horses of any officers or soldiers on their march, or on duty; or for any horse or horses or other beast, or any cart, carriage, or waggon employed in carrying or conveying, or returning empty from carrying or conveying, having been employed only in carrying or conveying the arms or baggage of any such officers or soldiers, or employed in carrying or conveying, or returning empty from having been employed only in carrying or conveying any sick, wounded, or disabled officer or soldiers; or for any waggon, wain, cart, or other carriage whatsoever, or the horse or horses or other cattle drawing the same, employed in conveying any ordnance, or barrack, or commissariat, or other public stores of or belonging to H. M. or for the use of H. M.'s forces, or returning empty from having been so employed; or for any carriage conveying volunteer infantry, or for any horse furnished by or for any person belonging to any corps of yeomanry or volunteer cavalry or infantry, and rode by him in going to or returning from any place appointed for and on the days of exercise, inspection, or review, or on other public duty, provided that such person shall be dressed in the uniform of his corps, and shall have his arms, furniture, and accoutrements according to the regulations of such corps at the time of claiming the exemption; or for any horses or carriages carrying or conveying any person or persons to or from any election or elections of a knight or knights of the shire to serve in parliament for the county or counties in which such turnpike road shall be situated; or for any horses or carriages which shall only cross any turnpike road, or shall not pass above one hundred yards thereon. (*a*)

3 G. 4. c. 126.

or from ministers attending their duty;

or for conveying vagrants; or prisoners;

or for conveying the mails;

or for horses of officers or soldiers on duty;

or for conveying baggage, or any sick, ordnance, or public stores;

or for horses and carriages used by corps of yeomanry, &c.;

or for conveying persons to or from county elections;

or for crossing roads, &c.

§ 33. Provides, that so much of this act as directs that no toll shall be demanded or taken from any person or persons going to or returning from his, her, or their proper parochial church or chapel, or of or from any other person or persons going to or returning from his, her, or their usual place of religious worship tolerated by law, on *Sundays*, or on any day on which divine service is ordered by authority to be celebrated, shall not extend, or be construed to extend, so as to exempt any such person or per-

Exemption from toll on Sundays, &c. for persons going to and returning from church not to extend to any turnpike within the distance of

(*a*) A question arose on stat. 13 *G.* 3. *c.* 84. § 34. (which contained a similar exemption, but differently worded, *viz.* "which shall only cross such road, *and* shall not pass above one hundred yards thereon.") Whether a carriage, which did not cross the road, but quitted it again on the same side on which it entered, was not, although not passing the hundred yards, liable to toll? The court of C. P. decided, that it was *not liable*, observing that the statute meant to exempt carriages making a very slight use of the road. *Major* v. *Oxenham*, 5 *Taunt.* 340.

3 G.4. c.126. five miles of London, &c.

sons from the payment of toll at any turnpike gate or gates situate *within* the distance of five miles of the *Royal Exchange* in the city of *London*, or within the distance of five miles of *Westminster Hall* in the city and liberties of *Westminster*.

Exempting carriages conveying king's stores, &c. from penalties for overweight.

§ 35. No person owning or driving, or causing to be driven, any waggon, wain, cart, or other carriage provided for the service of H. M.'s forces, or conveying any ordnance, or barrack, or commissariat, or other public stores of or belonging to H. M., or for the use of H. M.'s forces, shall be subject to any additional toll, penalty, or forfeiture for overweight: nor shall any such waggon, wain, cart, or other carriage, or the horse or horses drawing the same, while so employed, be stopped or detained by reason of any weight in any such waggon, wain, cart, or other carriage, or of being drawn by any number of horses or oxen; but it shall be lawful for the owner or driver of any such waggon, wain, cart, or other carriage, to put any number of horses or oxen to such waggon, wain, cart, or other carriage; any thing in this or any other act of parliament to the contrary notwithstanding.

Penalty not exceeding 5*l.* on fraudulently taking the benefit of exemption.

§ 36. If any person or persons shall, by any fraudulent or collusive means whatsoever, claim or take the benefit of any exemption from toll or overweight, or for using any additional horse or horses, or of any other exemption or exemptions whatsoever in this act contained, every such person shall, for every such offence, forfeit any sum not exceeding 5*l.*; and in all cases the proof of exemption shall be upon the person claiming the same.

G.4. c.95. Carriages laden with dung not to be exempted from toll when charged by any ocal act.

By stat. 4 *G.* 4. *c.* 95. § 23. Nothing in stat. 3 *G.* 4. *c.* 126. or this act contained, shall extend to exempt any waggon, wain, cart, or other carriage laden with dung, compost, or manure for manuring land, or any horse or other beast drawing the same, from any toll imposed in respect thereof by any local act or acts for making, repairing, and maintaining any particular roads, where in such act or acts such dung, compost, or manure shall be specially made subject to toll throughout the whole of such roads, without any local, parochial, or partial exemption.

Horses and carriages belonging to the royal family exempted from toll.

§ 24. No toll shall be demanded or taken by virtue of the said recited act or this act, or any other act or acts for making or maintaining turnpike roads, for any horses or carriages attending or going to attend, or returning from having attended H. M., or any of the royal family.

Recited act not to take away exemptions granted by local acts.

§ 26. Nothing herein, or in the said recited act contained, shall extend, or be deemed or construed to extend to repeal or take away any exemptions from toll which shall have been granted or allowed by any act for making or repairing any turnpike road.

XIV. Tolls to be paid upon Carriages affixed to others, and for Oxen.

[3 G. 4. c. 126. § 31. 38.]

3 G.4. c.126. Tolls to be paid upon carriages affixed to others.

By stat. 3. *G.* 4. *c.* 126. § 31. After reciting that whereas coaches, chariots, chaises, chairs, carts, and other carriages sometimes pass through turnpike gates affixed, tied, or secured to waggons or carts, and horses are sometimes sent under the charge of the drivers of such waggons and carts, and are fastened thereto; and that it is expedient to determine what tolls such coaches, chariots,

chaises, chairs, carts, and other carriages, and horses, ought to pay on passing through such gates; it is enacted, "that where by any act for repairing any turnpike road no toll is directed to be taken for or in respect of any coach, chariot, chaise, or any other carriage whatsoever with four wheels passing through any turnpike gate on such road, affixed, tied, or secured to any waggon or cart, the same toll, and no more, shall and may be demanded and taken for, and in respect of such coach, chariot, chaise, or other carriage, as if the same had passed through drawn by two horses; and where by any act for repairing any turnpike road no toll is directed to be taken for or in respect of any chair, cart, or other carriage whatsoever, with two wheels only, passing through any turnpike gate on such road, so affixed, tied, or secured to any waggon or cart as aforesaid, the same toll, and no more shall and may be demanded and taken for and in respect of such chair, cart, or other carriage with two wheels only, as if the same had passed through drawn by one horse only; and where any horse shall be fastened to but not used in drawing any waggon, cart or other carriage, such horse shall not be liable to a higher toll than a single horse: Provided that if any coach, chariot, chaise, chair, cart, or other carriage so affixed, tied, or secured to any waggon or cart, shall have any goods conveyed therein other than the harness thereto belonging, and such articles of package as may be necessary for the protection of such carriages, the same shall be liable to double the toll hereby imposed. 3 G. 4. c. 126.

§ 38. In all carriages wherein oxen or neat cattle shall be used, two oxen or neat cattle shall be considered as one horse, for all the purposes mentioned in this act, or any particular turnpike act with respect to tolls or other things. Two oxen to be considered as one horse.

XV. Tables of Tolls to be put up at Turnpike Gates — Recovery of Tolls — Penalty for evading.

[3 G. 4. c. 126. § 37. 39, 40, 41. — 4 G. 4. c. 95. § 28. — 9 G. 4. c. 77. § 16. 17.]

By stat. 3 *G.* 4. *c.* 126. § 37. It is enacted, that on or before the 1st day of *January*, 1823, the trustees and commissioners of every turnpike road shall, and they are hereby required to put up or cause to be put up, and afterwards to be continued at every toll-gate within their respective districts, a table painted in distinct and legible black letters on a board with a white ground, containing at the top thereof the name of the gate at which the same shall be put up, and also a list of all the tolls payable at every such gate, distinguishing the several tolls, and the different sorts of carriages for which they are to be paid, where there shall be any variation therein, and also a list of the several gates which shall be wholly or partially cleared by the payment of toll at the toll-gate or bar where such table of tolls shall be affixed; and the said trustees or commissioners shall also provide tickets denoting the payment of toll, and on such several tickets shall be named and specified the name of the gate at which the same respectively shall be delivered, and also the names of the several gates freed by such payment, one of which tickets shall be delivered *gratis* to the person paying 3 G. 4. c. 126. Trustees to put up a table of the tolls. Tickets denoting payment of toll to be provided and delivered to the persons paying the toll.

3 G.4. c.126. the toll; and on the production of such ticket at any gate or gates therein mentioned as being cleared by the payment of the toll at the gate where such ticket was delivered, the person producing the same shall pass through the gate or gates therein mentioned, without paying any further or additional toll.

4 G.4. c.95. Trustees to put up a table of the tolls, with the names of the gates.

By stat. 4 *G.* 4. *c.* 95. § 28. The trustees and commissioners for making or maintaining any turnpike road shall and they are hereby required to put up or cause to be put up, and afterwards to be continued, at every toll-gate within their respective districts, a table, painted in distinct and legible black letters, on a board with a white ground, containing at the top thereof the name of the gate at which the same shall be put up, and also a list of all the tolls payable at every such gate, distinguishing severally the total amount of tolls payable under any particular act or acts, and this and the said recited act, and the different sorts of carriages for which they are to be paid, where there shall be any variation therein, and also a list of the several gates which shall be wholly or partially cleared by the payment of toll at the toll-gate or bar where such table of tolls shall be affixed; and the said trustees or commissioners shall also provide tickets denoting the payment of toll, and on such several tickets shall be specified the name of the gate at which the same respectively shall be delivered, and also the names of the several gates freed by such payment, one of which tickets shall be delivered *gratis* to the person paying the toll; and on the production of such ticket at any gate or gates therein mentioned as being cleared as aforesaid by the payment of the toll at the gate where such ticket was delivered, the person producing the same shall pass through the gate or gates therein mentioned without paying any further or additional toll.

Tickets denoting payment of tolls.

9 G.4. c.77. Tolls to be collected.

By stat. 9 *G.* 4. *c.* 77. § 16. It shall be lawful for the trustees of any turnpike road, or any person appointed or continued to be appointed collector of the tolls to be taken by virtue of any local turnpike act, to demand and take every day, (such day, for the purposes of all local turnpike acts, being computed from 12 o'clock at night to 12 o'clock of the next succeeding night,) the several and respective tolls to be mentioned in any such act, at the several and respective toll-gates and turnpike, or side bars and chains, which are or shall be continued or erected by virtue of this act, or of any local turnpike act, in, upon, across, or on the sides of any turnpike road, or any part or parts thereof; and which tolls or sums of money shall be demanded and taken as aforesaid, before any horses, cattle, or carriage whatsoever shall be permitted to pass through any toll-gate or turnpike, or side bar or chain; and the tolls or sums of money to be levied and collected by virtue of any local turnpike act shall be and the same are hereby vested in the trustees of such act for the purposes thereof, in manner to be thereby directed.

3 G.4. c.126. For recovery of tolls.

See 10 East, 104.

By stat. 3 *G.* 4. *c.* 126. § 39. If any person subject or liable to the payment of any of the toll or tolls under and by virtue of this or any other act of parliament for making, repairing, or maintaining any turnpike road, shall, after demand thereof made, neglect or refuse to pay the same, or any part or parts thereof, it shall be lawful for the person or persons authorised or appointed to collect such tolls by himself or themselves, or taking such assistance as he or they shall think necessary, to seize and distrain any horse, beast,

Collector may distrain.

cattle, carriage, or other thing, upon or in respect of which any such toll is imposed, together with their respective bridles, saddles, geers, harness, or accoutrements, (except the bridle or reins of any horse or other beast, separate from the horse or beast), or any carriage in respect of the horses or cattle drawing the carriage on which such toll is imposed, or any of the goods or chattels of the person or persons so neglecting or refusing to pay; and if the toll, or any part thereof, so neglected or refused to be paid, and the reasonable charges of such seizure and distress shall not be paid within the space of four days next after such seizure and distress made, the person or persons so seizing and distraining may sell the horse, beast, cattle, carriages, or things so seized and distrained, or a sufficient part thereof, returning the overplus of the money to arise by such sale (if any) and what shall remain unsold, upon demand, to the owner thereof, after such tolls and the reasonable charges occasioned by such seizure, distress, and sale, shall be deducted. 3 G. 4. c. 126. If toll and charges be not paid in four days, distress may be sold.

§ 40. If any dispute shall happen or arise about the amount of the tolls due, or the charges of making, keeping, or selling any distress made for nonpayment of any tolls, it shall be lawful for the collector, or the person distraining, to retain such distress, or the money arising from the sale thereof (as the case may be), until the amount of the tolls due and the charges of the making, keeping, and selling the distress be ascertained by some justice of the peace for the county, division, or place wherein the turnpike or toll-gate at which the toll in dispute shall be payable shall or may be situate, who, upon application made to him for that purpose, shall examine the matter on the oath of the parties or other witness or witnesses (which oath such justice is hereby authorised and empowered to administer), and shall determine the amount of the tolls due, and shall award such costs and charges to either party as to the said justice shall appear right and proper; all which costs and charges shall and may be levied and recovered, in case of nonpayment thereof forthwith, by distress and sale of the goods and chattels of the person or persons so awarded or directed to pay the same, by warrant under the hand and seal of such justice, rendering the overplus (if any) upon demand, after deducting the costs and charges of making such distress and sale, to the person or persons whose goods and chattels shall have been so distrained and sold. Any justice may settle disputes concerning tolls.

§ 41. If any person shall with any horse, cattle, beast, or carriage, go off or pass from any turnpike road, through or over any land or ground near or adjoining thereto, (not being a public highway, and such person not being the owner or occupier, or servant, or one of the family of the owner or occupier of such land or ground,) with intent to evade the payment of the tolls granted by any act of parliament; or if any owner or occupier of any such land or ground shall knowingly or willingly permit or suffer any person (except as aforesaid), with any horse, cattle, beast, or carriage whatsoever, to go or pass through or over such land or ground with intent to evade any such tolls; or if any person shall give or receive from any person other than the collectors of the tolls, or forge, counterfeit, or alter any note or ticket directed to be given, with intent to evade the payment of the tolls, or any part thereof; or if any person shall fraudulently or forcibly pass Penalty not exceeding 5*l.* for evading tolls.

3 G.4. c. 126. through any such toll-gate with any horse, cattle, beast or carriage; or shall leave upon the said road any horse, cattle, beast or carriage whatsoever, by reason whereof the payment of any tolls or duties shall be avoided or lessened; or shall take off, or cause to be taken off, any horse or other beast or cattle from any carriage, either before or after having passed through any toll-gate, or having passed through any toll-gate shall afterwards add or put any horse or other beast to any such carriage, and draw therewith upon any part of any turnpike road, so as to increase the number of horses or other beasts drawing the said carriage after the same shall have passed through any toll-gate, whereby the payment of all or any of the tolls shall or may be evaded; or if any person shall do any other act whatever in order or with intent to evade the payment of all or any of the tolls, and whereby the same shall be evaded, every such person shall for every such offence forfeit any sum not exceeding 5*l*.

9 G.4. c.77. Penalty for claiming exemptions not being entitled thereto. And by stat. 9 *G.* 4. *c.* 77. § 17. If any person or persons shall claim or take the benefit of any of the exemptions mentioned in any local turnpike act, not being entitled to the same, every such person shall, for every such offence, forfeit any sum not exceeding 5*l*.; and in all cases the proof of exemption shall be upon the person claiming the same.

XVI. Composition for Tolls — Reduction or Advance.

[3 G. 4. c. 126. § 43, 44. — 4 G. 4. c. 95. § 13.]

4 G 4. c.95. Composition may be made for tolls for one year. By stat. 4 *G.* 4. *c.* 95. § 13. The trustees and commissioners of every turnpike road may, and they are hereby empowered from time to time, as they shall see convenient, to compound and agree, for any term not exceeding one year at any one time, with any person or persons, for the tolls payable for any horses, cattle, or beasts, or carriages, passing through any of the turnpikes or toll-gates of the road under their care and management, and collected and taken under the authority of the particular act or acts in execution of which the trustees or commissioners making such composition shall act, or of the said recited act or this act.

3 G. 4. c. 126. Trustees may reduce tolls; See form (No. 7.) By stat. 3 *G.* 4. *c.* 126. § 43. It shall and may be lawful for the trustees or commissioners appointed in and by virtue of any act of parliament for the repairing and amending any turnpike roads, in case no power or effectual power should be given to them under the act by which they are appointed, and they are hereby empowered, at a meeting to be held for that purpose, (of which one calendar month's notice shall be given in writing, to be affixed on all turnpike gates which shall be then erected upon such roads, and in some public newspapers circulated in that part of the country), from time to time to lessen and reduce all or any of the tolls granted by any of the said respective acts, for and during such time as the said trustees or commissioners shall think proper;

and afterwards advance them. and afterwards, at any meeting to be held as aforesaid, from time to time, as they shall see occasion, to advance all or any of the tolls so lessened to any sum or sums of money not exceeding the several rates granted by such acts of parliament and this act respectively: Provided nevertheless, that where the whole money

borrowed on the credit of the tolls granted by any such act shall not have been paid and discharged, no such tolls shall be lessened or reduced without the consent of the person or persons entitled to five sixths of the money remaining due upon such respective tolls. 3 G. 4. c. 126. Reduction not to be made without consent of creditors in certain cases.

§ 44. In all cases where the trustees or commissioners of any turnpike road shall reduce or advance the tolls on the road or roads for which they shall act, such reduction or advance shall be made as to waggons, carts, and other carriages, the breadth of the wheels whereof is regulated by this act, with reference to the proportion or scale of tolls payable on such waggons, carts, or other carriages, according to the breadth of the wheels thereof; (that is to say,) the trustees or commissioners making the reduction or advance, shall reduce or advance the toll payable on waggons, carts or other such carriages, having the fellies of the wheels thereof of the breadth of six inches, and shall then take and demand double or other proportions (as the case may be) of such reduced or advanced tolls on waggons, carts, or other carriages, having the fellies of the wheels thereof of a greater or less breadth than six inches; and the reduction or advance of the proportion of toll to be payable by this or any other act, in respect of the breadth of wheels, or any other reduction or advance of tolls, to be made in any other way than in manner aforesaid, shall be null and void to all intents and purposes whatsoever. Reduction or advance of tolls to be made proportionably.

XVII. Erecting Toll Gates.

[3 G. 4. c. 126. § 46. — 7 & 8 G. 4. c. 24. § 6. — 9 G. 4. c. 77. § 3, 4, 5.]

By stat. 9 *G.* 4. *c.* 77. § 3. So much of the act 3 *G.* 4. *c.* 126. as directs that no toll-gate shall be erected on the side of any turnpike road, unless the same be ordered by the trustees or commissioners at a public meeting, in manner therein mentioned, is repealed. 9 G. 4. c. 77. Restriction of 3 G. 4. c. 126. § 45. as to the erection of toll-gates, repealed,

§ 4. So much of the act 7 & 8 *G.* 4. *c.* 24. as directs that it shall be lawful for the trustees of any turnpike road to order and direct any turnpikes, toll-gates, or side bars to be removed, as therein directed, is repealed. So much of 7 & 8 G. 4. c. 24. as directs trustees to remove toll-gates, repealed.

§ 5. It shall be lawful for the trustees of any turnpike road, and they are hereby authorised and empowered, to continue all and every or any of the toll-gates or toll-houses now standing or being in, upon, or across any such turnpike road, or on the sides thereof, and from time to time at any special meeting to be holden for that purpose, of which meeting public notice, specifying the time and place and the purpose thereof, shall have been given in some newspaper published or circulated in the county or counties through which any such turnpike road passes, and also by affixing a copy of such notice on all the turnpikes, toll-gates, or side bars (if any) which shall be then standing on such road, fourteen days previously to such meeting, to order and direct, by some order in writing, to be signed by three at least of the trustees present at such meeting, that there be erected and built, in, upon, or across any such turnpike road or any part thereof, or upon the sides thereof or any part thereof, when and where they shall judge necessary, such and so many toll-gates, turnpikes, side bars, and chains, with toll- Power to continue or erect toll-gates. See forms (Nos. 4. & 5.)

9 G.4. c.77.

houses, out-houses, and other conveniences thereto, and also to take in and enclose on the sides of such road, or any part thereof, suitable garden spots for each of such toll-houses, not exceeding one eighth of a statute acre to each toll-house, as the said trustees shall direct or appoint; and also shall and may from time to time at any such meeting, or at any other meeting to be called as aforesaid, and by such order as aforesaid, from time to time order and direct any of such toll-gates, turnpikes, side bars, and chains to be taken down or discontinued, or to be removed and placed elsewhere, upon, across, or on the sides of such road, in such situations as to them the said trustees may appear fit or eligible: Provided that nothing in this act contained shall authorise any toll-gate, turnpike, side bar, or chain to be erected or built in any place or places where it is or may be provided by any local turnpike act there shall be no turnpike, toll-gate, side bar, or chain erected, built, or placed.

3 G.4. c.126. If trustees cause gates to be erected contrary to any act of parliament, justices may order them to be removed.

By stat. 3 *G.* 4. *c.* 126. § 46. If the trustees or commissioners appointed to put any act made for the repair of any turnpike road into execution, shall exceed their power by erecting or continuing any gate or gates, turnpike or turnpikes, where they have not any power, by virtue of any act of parliament, to erect such gate or gates, turnpike or turnpikes, it shall and may be lawful for the justices of the peace for the limit where any such gate or gates, turnpike or turnpikes, is or shall be erected or continued, in their general quarter session assembled, upon complaint of such excess of power in such trustees, in a summary way to hear and determine whether such power has been exceeded, and if such power has been exceeded, to order the sheriff of the county, who is hereby authorised and required to execute such order, to remove any such gate or gates, turnpike or turnpikes.

7 & 8 G.4. c.24. Lamps to be lighted at toll-houses.

And by stat. 7 & 8 *G.* 4. *c.* 24. § 6. It shall be lawful for the trustees to order and direct one or more lamp or lamps to be placed and erected on or against or in front of each and every of the toll-houses on the road, and also to order and direct at what times of the year and during what hours such lamp or lamps, or any of them, shall be kept lighted; and all and every the collector and collectors of the tolls on such road, and also all and every the lessees or lessee thereof, who shall neglect or omit to observe and fulfil the order of the said trustees in respect to the keeping and lighting of such lamp or lamps, shall forfeit and pay any sum not exceeding twenty shillings for every such neglect or omission; and in case any person shall damage or injure any lamp or lamps to be placed and set up as aforesaid, or extinguish the light therein, such person shall forfeit and pay any sum not exceeding 40*s.* for every such offence.

XVIII. Farming the Tolls.

[3 G. 4. c. 126. § 55. 57, 58. — 4 G. 4. c. 95. § 52, 53, 54.]

3 G.4. c.126. Powers for trustees or commissioners to farm out the tolls.

By stat. 3 *G.* 4. *c.* 126. § 55. It is enacted, that it shall and may be lawful for the trustees or commissioners of every turnpike road, at a public meeting, to let to farm the tolls of the several gates erected upon their respective turnpike roads, in the manner hereinafter mentioned, although no express power shall have been given

by any act or acts for that purpose; and that whenever any tolls shall hereafter be let to farm by virtue of the powers given by this or any other act or acts, the following directions shall be observed; (that is to say,) the trustees or commissioners shall cause notice to be given of the time and place for letting the same, at least one month before the day to be appointed for that purpose, by affixing the same upon every toll-gate belonging to such turnpike road, and also by insertion thereof in some public newspaper circulated in that part of the country, and specifying in every such notice the sum which the said tolls produced in the preceding year, clear of the salary for collecting the same, in case any hired collector was appointed, and that they will let such tolls by auction to the best bidder, on his producing sufficient sureties for payment of the money monthly, or otherwise (as in such notice shall be specified), and that they will be put up at the sum which they were let for or produced in the preceding year, clear of the salary of the collector; and to prevent fraud or any undue preference in the letting thereof, the trustees or commissioners are hereby required to provide a glass with so much sand in it as will run from one end of it to the other in one minute, which glass, at the time of letting such tolls, shall be set upon a table, and immediately after every bidding the glass shall be turned, and as soon as the sand is run out it shall be turned again, and so for three times, unless some other bidding intervenes, and if no other person shall bid until the sand shall have run through the glass three times, the last bidder shall be the farmer or renter of the said tolls, and shall forthwith enter into a proper agreement for the taking thereof, and paying the money at the times specified in such notice, with such surety or sureties for payment thereof, and under such conditions and in such manner as the said trustees or commissioners shall think fit; and if the person being the last bidder shall not forthwith enter into such agreement, it shall and may be lawful to put up the said tolls again immediately for another bidder, and in like manner to continue putting up the same until a bidder shall be found who shall enter into such agreement; and in case no bidder shall offer, or in case the same shall not be let at such auction, it shall be lawful for the said trustees or commissioners, to accept a private tender for the same, and to demise or let to farm, or agree to demise or let to farm, all or any of such tolls, at any sum not less than the sum at or for which they shall have been last let; or the said trustees or commissioners may appoint a collector of such tolls, or fix some future day for the letting thereof, as they shall judge most proper, upon giving such notice thereof as aforesaid, and shall and may in that case put them up at such sum as they shall think fit; and if the person or persons who shall be the farmer or renter, or collector or collectors of such tolls shall take a greater or less toll from any person or persons than what is authorised or directed by this or the particular turnpike act, he or they shall, for every such offence, forfeit the sum of *5l.*, and the said agreement for renting the tolls shall, if the said trustees or commissioners shall think fit to vacate the same, become and be null and void: Provided always, that at all such lettings the trustees or commissioners shall be entitled to bid for the tolls so to be let, either by themselves or their clerk or treasurer, or any other person by them authorised: Pro-

3 G.4 c. 26.

Notice to be given for letting the tolls. See form (No. 6.)

Tolls to be put up at the sum produced the preceding year.

Mode of receiving biddings.

If tolls be not let at such auction, a private tender may be accepted.

Penalty on collectors taking more or less than the authorised toll, *5l.*

3 G.4. c.126.

vided also that no such tolls shall be demised or leased for any longer term than three years at any one time. (a)

Limiting leases to three years.

4 G.4. c.95. Tolls may be let in lots.

By stat. 4 *G.* 4. *c.* 95. § 52. It shall be lawful for the trustees or commissioners of any turnpike road, under and subject to the directions and provisions of stat. 3 *G.* 4. *c.* 126., and this act, to let to farm, or agree to let to farm, all or any part of the tolls of the several gates erected upon their respective roads, and all or any of the said gates, either together and in one lot, or by parcels and in several lots; and in case the said trustees or commissioners shall at any time let to farm the said tolls in parcels or lots, it shall be lawful for the said trustees or commissioners to put up each such parcel or lot at such sum as they shall think fit.

Trustees may appoint some person to bid at letting of tolls.

§ 53. When the trustees or commissioners of any turnpike road shall put up the tolls to let to farm, the said trustees or commissioners may, if they think fit, appoint some person to bid for the same on their account, to the intent that such tolls may not be let for less than an adequate value.

Tolls of another trust adjoining may be farmed.

§ 54. After reciting, that whereas in some situations a toll-gate or bar, belonging to trustees or commissioners of one road, is placed so near to the gate or bar of the trustees or commissioners of another road, as to be inconvenient to the respective trusts, and to the public; it is enacted, that it shall be lawful for the trustees or commissioners of any turnpike road, if they shall agree thereto, at any public meeting to be holden for that purpose, to take to farm the tolls payable at any toll-gate or bar of any other road adjoining or near to the road under their care and management; and the trustees or commissioners so farming the tolls may collect and receive the same, or may reduce the said tolls so farmed, or may discontinue the same, as they shall see fit.

3 G.4. c.126. Contracts and agreements to be valid when signed by the trustees, &c.

By stat. 3 *G.* 4. *c.* 126. § 57. All contracts and agreements to be made or entered into for the farming or letting the tolls of any turnpike roads, signed by the trustees or commissioners letting such tolls, or any two or more of them, or by their clerk or treasurer, and the lessee or farmer, and his sureties, of such tolls respectively, shall be good, valid, and effectual to all intents and purposes, notwithstanding the same may not be by deed or under seal.

Lessees of tolls may appoint persons to receive the same, who shall be subject to the like penalties as collectors appointed by the trustees.

§ 58. During such time as the tolls, or any part or parts thereof, shall be leased to any person or persons whomsoever, it shall be lawful for the lessee or lessees, farmer or farmers thereof, or such other person or persons as he, she, or they shall, by writing or writings under his, her, or their hand or hands, authorise or appoint, to demand and take such tolls so leased, demised, or farmed, and to use all such means and methods for the recovery thereof, in case of nonpayment or evasion, as any collector of such tolls appointed under or by virtue of any act of parliament for the making of turnpike roads, or by this act, is authorised and empowered to use; and such lessee or lessees, farmer or farmers, or other person or persons as aforesaid, so demanding and taking

(a) Though the forms of the act have not been strictly complied with, and the renter is illegally appointed, he may yet recover, on an account stated, tolls for which he has given credit; no objection being made by the trustees, and the party to whom the credit was given, having, by his own acts, acknowledged the truth of the account. *Peacock* v. *Harris*, 10 *East*, 104.

such tolls, shall be subject to the like pains, penalties, and forfeitures, and shall be liable to the like actions and prosecutions as any collector of such tolls appointed by the trustees or commissioners is subject or liable to. 3 G. 4. c. 126.

XIX. Property of Toll-houses vested in Trustees.

[3 G. 4. c. 126. § 60. — 4 G. 4. c. 95. § 57, 58, 59.]

By stat. 3 *G.* 4. *c.* 126. § 60. It is enacted, that the right, interest, and property of and in all the toll-gates and toll-houses, weighing machines, and other erections and buildings, lamps, bars, toll-boards, direction-boards, milestones, posts, rails, fences, and other things which shall have been or shall be erected and provided in pursuance of any act of parliament for making turnpike roads, with the several conveniences and appurtenances thereunto respectively belonging, and the materials of which the same shall consist, and all materials, tools and implements which shall be provided for repairing the said roads, and the scrapings of the said roads, shall be vested in the trustees or commissioners acting in pursuance of such act for the time being, and they are hereby authorised and empowered to apply and dispose of the same as they shall think fit, and to bring or cause to be brought any action or actions, and to prefer and prosecute, or order and direct the preferring and prosecuting of any informations or indictments, against any person or persons who shall dig up, break, or pull down, steal, take, or carry away, spoil, destroy, injure, or damage any of the toll-gates, or toll-houses, weighing machines, or other erections or buildings, lamps, bars, toll-boards, direction-boards, milestones, posts, rails, fences, and other things, or any of the conveniences and appurtenances thereto belonging, or any of the tools, implements, or materials aforesaid, or shall interrupt them, the said trustees or commissioners, or any of their officers, in the possession thereof; in all which proceedings it shall be sufficient to state generally such articles to be the property of the clerk for the time being to the said trustees or commissioners.

3 G. 4. c. 126. The property o toll-houses, &c. vested in trustees.

Scrapings of road.

Actions may be brought in the name of the clerk.

By stat. 4 *G.* 4. *c.* 95. § 57. Where any toll-house or toll-houses standing on or adjoining any turnpike road, and which shall have been erected by or vested in the trustees or commissioners of such road, shall become useless, and be no longer required for the purposes of such road, it shall not be lawful for the trustees or commissioners of such road to sell or dispose of such toll-house or toll-houses, but in every such case the trustees or commissioners of the road on which such toll-house or toll-houses no longer required shall stand, shall cause such toll-house or toll-houses, with the outhouses attached or belonging thereto, to be pulled down, and the materials thereof to be sold or removed, and the site of such toll-house or toll-houses so pulled down, together with the gardens and appurtenances thereunto belonging, may then be sold by the said trustees or commissioners, in the same manner as and under the regulations in the said recited act and this act contained, with respect to any land or ground not wanted for the purposes of the road.

4 G. 4. c. 95. Where toll-houses are not wanted they shall be pulled down and the materials sold.

§ 58. During such time as the tolls arising on any turnpike road, or any part or parts thereof, shall be leased, demised, or let to any person or persons whomsoever, it shall and may be lawful to and

Lessees, or persons appointed by them, may

4 G.4. c.95.

for the lessee or lessees, or farmer or farmers thereof, or such other person or persons as he or they shall authorise or appoint, to occupy and enjoy the toll-house or toll-houses at which the said tolls so let are to be collected and to arise, with all the appurtenances and conveniences to the same toll-house or toll-houses belonging, for the purpose of collecting such tolls, during so long time only as such lessee or lessees, farmer or farmers, shall duly and regularly pay his, her, or their rent or rents, and perform the covenants, agreements, and conditions of such lease, demise, or letting, but no further or otherwise.

occupy toll-houses.

Enabling the trustees to take possession of the toll-house, &c. when let to farm, or held by the collectors for the trustees, in default of performance of conditions, &c.

§ 59. In case all or any of the tolls arising by virtue of any act for repairing or amending any turnpike road shall have been or shall be demised or let to farm to any person or persons, in any manner whatsoever, and the lessee or lessees, farmer or farmers thereof, shall neglect or refuse to perform the terms and conditions on which the same shall have been or shall be so demised or let; or in case the rent or rents agreed to be paid by such lessee or lessees, farmer or farmers, shall be in arrear by the space of seven days next after any of the days on which the same ought to be paid, pursuant to the agreement for letting to farm thereof; or in case any such lease or agreement shall in any other manner become void; then and in any of those cases it shall and may be lawful for any justice of the peace for the county or place, by warrant under his hand and seal, to order a constable or other peace officer, with such assistance as shall be necessary, to enter upon and take possession of any toll-house or toll-houses, toll-gate, bar or chain, or weighing machine, and the buildings and appurtenances thereto belonging, and to remove and put out such lessee or lessees, farmer or farmers of the tolls arising thereat respectively, or other person or persons who shall be found therein, together with his, her, or their goods, out of and from the possession of the said toll-house or toll-houses, and from the collection of tolls, and to put the said trustees or commissioners, or any one of them, or their new appointed officer, or other person acting by or under their authority, into the possession thereof; and thereupon it shall be lawful for the said trustees or commissioners (if they shall think fit) to vacate and determine the contract or agreement (if any) for demising or letting the said tolls to such lessee or lessees, farmer or farmers, and the same shall be from that time utterly void to all intents and purposes (save as to the covenants or agreements for payment up to that time of the rent or rents thereby reserved, or other covenants or agreements on the lessee's part which shall have been holden) as if such demise or agreement had never been made; and it shall be lawful for the said trustees or commissioners, in every such case, to demise or let to farm the said tolls again to any other person or persons, or cause them to be collected, as if no former demise, contract, or agreement had been made relative thereto.

XX. Statute Duty and other Labour.

[3 G. 4. c. 126. § 105, 106, 107, 108, 109. — 4 G. 4. c. 95. § 77. 80, 81, 82.]

4 G.4. c.95. Regulations as

By stat. 4 *G.* 4. *c.* 95. § 80. "All persons who by law are or shall be liable to do statute work, or are or shall be chargeable towards

the repairing and amending any turnpike road, shall be and remain liable thereto, in like manner in every respect as they now are or have heretofore been; and it shall be lawful for any two or more justices of the peace in and for the county, city, or place in which any such turnpike road shall lie or be situate, and they are hereby required and empowered, upon application made to them by any three or more of the trustees or commissioners of such turnpike road, or by their clerk or surveyor, yearly to adjudge and determine what part or proportion of the statute work shall every year be done upon such road by the inhabitants of the respective parishes, hamlets, and places in or through which the said road doth or shall lie, lead, or pass, and also what proportion of the money received by the surveyor or surveyors of the highways of every such parish, hamlet, or place, in lieu of or as a composition for such statute-work (*a*) as aforesaid, shall be by him, her, or them paid to the said trustees or commissioners, or their treasurer or treasurers; and in order thereunto, the surveyor or surveyors of the highways for every such parish, hamlet, or place, shall, on an order in writing (No. 9.) made by the said justices, on an application to them by the trustees or commissioners of the turnpike road, or any three or more of them, or by their clerk or surveyor, and respectively delivered to such surveyor or surveyors of the highways, or left at his or their last or usual place of abode, bring in and deliver, within ten days afterwards, to the said turnpike surveyor, or to his place of abode, true and perfect lists in writing (No. 25.), of the names of the several persons who, within such parish, hamlet, or place, are by law subject and liable to do statute work for that year, or to the payment of any money in lieu of or as a composition for such statute work, distinguishing the nature of the work to be done, whether with teams or draughts, or otherwise, and also the amount of the respective sums to be paid; which list of names shall be made in such manner and under such regulations and restrictions as are or may be directed by any law or statute in force or effect for the repairs of the public highways, and may be made in the form specified in the schedule to this act; and the said turnpike surveyor, having received such lists, shall, within fourteen days afterwards, give a notice (No. 10.) to the surveyor or surveyors of the highways, of the time when such lists will be laid before the said justices, in order to apportion the said statute duty; and at the time appointed in and by such notice the said lists shall be laid before the said justices by the said turnpike surveyor, in the presence of the said surveyor of the highways (if he shall attend), and out of such lists the said justices shall and may allot, appoint, and order (No. 11.) such and so many of the persons who shall appear to be subject and liable to do statute work in every year upon such road, as the said justices shall think reasonable, and the same shall be done on such days, and at such time (not being hay-time or harvest), and on such parts of the said road, as the said trustees or commissioners, or their surveyor or surveyors, shall from time to time order, direct, or appoint; and the said justices shall and may order (No. 11.) and direct the surveyor or surveyors of such parishes, hamlets, and places respectively to pay over to the said trustees or commissioners, or their treasurer, or other person duly authorised to receive the same, such proportion of the composition-money for statute work as aforesaid as they the said justices shall

4 G.4. c. 95. to statute labour.

(*a*) See stat. 54 G.3. c. 109. § 4. *ante*, p. 806. See also *Stanley* v. *Fielden and others*, *ante*, p. 807.

4 G.4. c.95.

think proper, and at such time or times as the said justices shall direct; and each and every person who shall neglect or refuse to do such statute work as aforesaid, after notice in writing given to or left for him, her, or them at his, her, or their last or usual place or places of abode for that purpose, by any surveyor to the said trustees or commissioners, shall for every day of his, her, or their default, or the default of any labourer or labourers, team or teams, draught or draughts, horse or horses, beast or beasts, to be provided by him, her, or them, be subject and liable to such fines, penalties, and forfeitures as such person or persons may be subject or liable by any law or statute now in force or effect for repair of the public highways; and if any person who shall come to work as a labourer, or shall be sent with any team or draught to work on any part of such road, shall be found idle or negligent by any surveyor to the said trustees or commissioners, such surveyor is hereby empowered to remove and dismiss the person who shall be found idle or negligent as aforesaid; and in that case every such person shall be subject and liable to the respective forfeitures and payments as aforesaid, as if he had neglected or refused to come, or such team or draught had not been sent to work on any part of such road; all which forfeitures shall be paid to the treasurer to the said trustees or commissioners, and applied towards amending the said road; and in case the surveyor or surveyors of the highways for any of the said parishes, hamlets, or places, shall refuse or wilfully neglect to give in any such lists as aforesaid, or shall knowingly or wilfully give in false and imperfect lists, or shall refuse or neglect to collect or pay over such composition-money, or any part thereof, in manner aforesaid, every such surveyor so offending shall, for every such offence, forfeit and pay any sum not exceeding 10*l.*; and such composition-money shall and may be recovered from such surveyor or surveyors of the highways, by distress and sale of his or their goods and chattels, by warrant under the hands and seals of any two justices of the peace for the county, city, or place where any such road shall lie or be situate."

Form of surveyors' list.

§ 77. After reciting that whereas the form of the list to be delivered to the surveyors of turnpike roads by the surveyors of the highways is omitted in the schedule to stat. 3 *G.* 4. *c.* 126.; it is enacted, that the form given in the schedule to this act annexed marked (No. 2.*) shall be used for that purpose.

* See form, (No. 25.)

In case no highway surveyor shall be appointed, lists of persons liable to do statute work to be made out in manner herein directed.

§ 81. Where any turnpike road shall pass through any parish, township, or place liable to the repair of the roads within the same, but for which no surveyor of the highways shall be appointed, then and in every such case the churchwardens and overseers of the poor of such parishes, townships, and places respectively, and in cases where neither surveyor, churchwardens, or overseers of the poor shall be appointed, then such other inhabitant or inhabitants of such parish, township, or place as shall be thereto required by an order in writing made by the justices on application to them by the trustees or commissioners of the turnpike road, or by their clerk or surveyor, and respectively delivered to such churchwardens or overseers, or inhabitant or inhabitants, or left at his or their last or usual place of abode, shall deliver or cause to be delivered within ten days afterwards to the said turnpike surveyor, or to his place of abode,

true and perfect lists in writing of the names of the several persons who within such parish, township, or place are by law subject and liable to do statute work for that year, or to the payment of any money in lieu of or as a composition for such statute work, distinguishing the nature of the work to be done, whether with teams or draughts, or otherwise, and also the amount of the respective sums to be paid; which lists shall be made and used, and dealt with in the manner directed by the said recited act and this act; and the statute work shall be ordered and adjudged by the justices, and enforced and required or compounded for, in the same way as if the said lists had been made and delivered by the surveyor of the highways, under the provisions and authorities of the said recited act and this act. 4 G. 4. c. 95.

By stat. 3 *G.* 4. *c.* 126. § 105. It is enacted, that it shall be lawful for the trustees or commissioners of every turnpike road to compound and agree with any person or persons, bodies politic or corporate, for the repairs of statute work to be by him, her, or them done on any such turnpike road, and also with the surveyor or surveyors of the highways for any of the parishes, hamlets, or places in which the said road doth or shall lie and be situate, for a certain sum of money, by the year or otherwise, as the said trustees or commissioners shall think reasonable, in lieu of the whole or any part of the statute work or other work to be by all or any of the said inhabitants and occupiers done on the said road, [*which composition-money shall always be paid by the surveyor or surveyors of the highways, or other officer of the parish, hamlet, or place, or by the person or persons so compounding, to the treasurer of the trustees or commissioners in advance, on or before the* 29*th day of* September *in each and every year, or otherwise such person or persons, bodies politic or corporate, or inhabitants and occupiers within such parish, hamlet, or place, shall not be permitted to compound for that year;*] and all such composition-money shall be applied for the purposes of such turnpike road; and that every such surveyor of the highways who shall pay any such composition-money shall be reimbursed the same in like manner as surveyors of the highways are by the laws in being to be reimbursed the money by them laid out and expended in buying materials for the repairing of any other highway or highways. 3 G. 4. c. 126. Statute work may be compounded for.

By stat. 4 *G.* 4. *c.* 95. § 82. The words within brackets are repealed, and it is enacted, that all composition-money in lieu of statute duty shall be paid by the person or persons compounding, to the treasurer of the trustees or commissioners, at such time or times, and in such manner as shall be agreed upon at the entering into such composition. 4 G. 4. c. 95. Instead of compositions for statute work being paid by Sept. 29. yearly, such composition shall be paid according to agreements.

By stat. 3 *G.* 4. *c.* 126. § 106. It is enacted, that it shall and may be lawful for the trustees or commissioners of any turnpike roads to contract and agree with any person or persons liable to the repair of any part of the road under the care and management of such trustees or commissioners, or of any bridges thereon, by tenure or otherwise, for the repair thereof, for such term as they shall think proper, not exceeding three years, and to contribute towards the repair of such road or bridges such sum or sums of 3 G. 4. c. 126. Trustees may contract with persons liable to the repairs of roads by tenure.

3 G. 4. c. 126. money as they shall think proper, out of the tolls arising on such turnpike road. See form (No. 8.)

Composition may be entered into by counties for repairing bridges repaired by parishes.

§ 107. And whereas many bridges on turnpike roads are by prescription at present liable to be repaired by certain parishes, and not by the county or counties in which they are situated, and which bridges, from change of times and circumstances, are become no longer sufficiently convenient for the use of the public without being enlarged or otherwise improved; it is therefore enacted, that it shall and may be lawful for any such county or counties, parish or parishes respectively, to enter into a composition or agreement with each other, and by the authority of those persons who shall be legally competent to make rates for such county and parish respectively, whereby the improvement and future repair of any such bridge shall be undertaken and lie upon the county or counties in which such bridge is locally situated; and all rates made for carrying into effect any such composition, agreement, repairs, or improvement, shall be made and assessed in the same manner as other the rates of such county or parish respectively, and shall be good and valid to all intents and purposes in the law whatsoever. Vide Vol. I. tit. Bridges.

Compositions may be entered into by trustees and parishes for repair of bridges.

§ 108. It shall and may be lawful for the trustees or commissioners of any turnpike road, and for such parish or parishes, in like manner to enter into a composition or agreement with each other, and by the authority of the persons at present legally competent to make rates for such parish or parishes, whereby in consideration of such sum or sums of money as shall be agreed upon being yearly paid to the treasurer of the trustees or commissioners entering into such composition or agreement, out of the rates to be raised for the repair of the bridge or bridges the subject thereof, the repairs of any such bridge shall, during the continuance of any act or acts of parliament under which such trustees or commissioners shall be appointed or act, be undertaken and carried on by the said trustees or commissioners; and all rates and assessments raised and levied for carrying such composition or agreement into effect, shall, in like manner, be good and valid to all intents and purposes whatsoever.

Where the repairs and revenues of a turnpike road shall be such as that statute labour will not be required for such road, justices may dispense with it.

§ 109. "And whereas there are or may be turnpike roads in such a state and condition with regard to their repairs and the revenues arising upon them, that the statute duty required to be performed upon the same may be in the whole or in part dispensed with, and employed more advantageously for the benefit of the other public highways within the parish, township, or place liable to the performance of such duty;" it is enacted, "that it shall and may be lawful for the justices of the peace at any special sessions, upon application to them made by the surveyor of the highways, or by any two inhabitants of any parish, township, or place, to summon before them the clerk and surveyor of any turnpike road, within such parish, township, or place alleged to be in the situation before described, and then and there to produce before them a state of the revenues and debts of such turnpike road, and for such justices to enquire into the state and condition of the repairs thereof, and also of the repairs of such other highways: and if it shall appear to the said justices, upon full and clear evidence, that the whole or any part of such statute duty may be conveniently dispensed with from such turnpike road, without

endangering the securities for the monies advanced upon the credit of the tolls thereof, and that such statute duty is wanted for the repairs of the other highways within such parish, township, or place, then and in that case it shall and may be lawful for the said justices to order the whole or part of such statute duty to be performed upon the highways not being turnpike within such parish, township, or place, under the direction of the surveyor thereof, during such time as to them shall seem reasonable, and the same shall be performed accordingly." (Nos. 12, 13.) 3 G.4. c.126.

XXI. Apportionment of Fine on Indictment for Non-repair.

[3 G. 4. c. 126. § 110.]

By stat. 3 *G.* 4. *c.* 126. § 110. It is enacted, that when the inhabitants of any parish, township, or place shall be indicted or presented for not repairing any highway being turnpike road, and *the court before whom such indictment or presentment shall be preferred* shall impose a fine for the repair of such road, such fine shall be apportioned, together with the costs and charges attending the same, between the inhabitants of such parish, township, or place, and the trustees or commissioners of such turnpike road, in such manner as to the said court, upon consideration of the circumstances of the case, shall seem just; and it shall and may be lawful for such court to order the treasurer of such turnpike road to pay the sum so proportioned for such turnpike road out of the money then in his hands or next to be received by him, in case it shall appear to such court, from the circumstances of such turnpike debts and revenues, that the same may be paid without endangering the securities of the creditors who have advanced their money upon the credit of the tolls to be raised thereupon, which order shall be binding upon such treasurer, and he is hereby authorised and required to obey the same. 3 G.4. c.126. Where parish indicted for non-repair of a turnpike road the court to apportion the fine between the parish and the trustees or commissioners.

The true construction of this section is, that the court which imposes the fine shall have power to apportion it between the parish and the trust; so that where an indictment was originally preferred at the assizes, and afterwards removed into the court of K. B. by *certiorari*, it was held that the court of K. B. might apportion the fine. *R.* v. *Upper Papworth*, 2 *East*, 413.

On a turnpike road being out of repair, the remedy is by indictment or presentment against the inhabitants of the parish or township within which it is situated. This has been complained of as a defect in the system, and a considerable hardship on the parishioners, and with some reason. The superintendence of the road, and of the repairs of it, is taken from them and transferred to the trustees, to whom powers are given to raise, by the collection of tolls, funds over which the parish have no check or control. In case of misapplication or of improper or wasteful expenditure, they have no power of calling for an account; and although the inhabitants may see the road going to decay, their remedies to compel the trustees to do their duty are doubtful, if indeed any exist. No instance is found of an indictment or presentment against trustees, and it seems taken for granted that they are not amenable to

this process. *Vide per Abbott* C. J., *Rex* v. *Netherthong*, 2 B. & A. 183.

Where a local act for the making a public highway directed the trustees to repair the same with the monies arising from the tolls; the court of K. B. held that this did not discharge the inhabitants of the township, through which a part of it was carried, from the common-law liability to repair: the public having a right to hold them liable, whether the road was altogether new or substituted for another. The tolls are only an auxiliary fund; the trustees are not indeed liable to an indictment, but the inhabitants may apply to the court for relief. *R.* v. *Inh. of Netherthong*, 2 B. & A. 179.

The parishioners, as a body, have no fund on which the expenses of proceedings against trustees can be charged, and are in this case of indicting turnpike roads, made criminally responsible for the neglect of others, without any means of preventing the mischief. *See Dehany's Observations on the General Turnpike Acts*, p. 89.

XXII. Causeways — Ditches — Drains.

[3 G. 4. c. 126. § 111, 112, 113. 115. — 4 G. 4. c. 95. § 67.]

3 G. 4. c. 126. Power to make causeways.

By stat. 3 *G.* 4. *c.* 126. § 111. It is enacted, that it shall be lawful for the trustees or commissioners to make and keep in repair, or cause to be made and kept in repair, any causeway or causeways for the use of foot passengers, in, upon, or on the sides of the turnpike road, in such manner as they shall think proper; and also to make or cause to be made a road through the grounds adjoining to any ruinous or narrow part of any turnpike road, (not being the site or ground whereon any house or houses stand, nor being a yard, garden, park, paddock, planted walk or avenue to any house, or any enclosed ground planted and set apart as a nursery for trees,) to be made use of by all passengers, cattle, and carriages, as a public highway, whilst the old road is repairing or widening, and till such time as it shall be convenient for passengers and carriages to pass along the same, making such recompence to the owners and occupiers of such private grounds for the damages they shall or may thereby sustain, as shall be adjudged reasonable by the trustees or commissioners of the road under repair or alteration; and in case of any difference concerning such damages between such owners or occupiers and such trustees or commissioners, then it shall and may be lawful for any two or more justices of the peace acting in and for the county wherein such grounds shall be situate, on 14 days' notice in writing being given by either party to the other, to settle, adjudge, and finally determine what recompence shall be made to such owners and occupiers, for the damage they shall have sustained as aforesaid.

Where turnpike road is ruinous, roads may be made through adjoining grounds.

Recompence to be made to owners for damages.

In case of difference, two justices shall settle it.

Trustees not empowered to repair causeways unless specially authorised.

§ 112. Nothing herein contained as to the making or maintaining any causeway or footpath, or any other matter or provision in this act, shall extend or be deemed or construed to extend to authorise or empower any trustees or commissioners of any turnpike road to lay down, continue, repair, or maintain any pavement, or any paved or pitched causeway or footpath, in or by or at the side of any turnpike road within any town, village, or hamlet where such turnpike road shall pass through the same

unless provision shall have been or shall be specially made for that purpose in the act or acts of parliament under which such turnpike road shall be made, maintained, or repaired; but in default of such provision all and every such pavement, paved or pitched causeway or footpath, within such town, village, or hamlet shall be made, repaired, and maintained, by and at the costs of the inhabitants of such town, village, or hamlet, or by such other persons as shall be in anywise liable to make, maintain, and repair the same. 3 G. 4. c. 126.

§ 113. Enacts, that ditches, drains, or watercourses of a sufficient depth and breadth, for the keeping all turnpike roads dry, and conveying the water from the same, shall be made, scoured, cleansed and kept open, and sufficient trunks, tunnels, plats, or bridges, shall be made and laid where any carriageways, or footways lead out of the said turnpike roads into the lands or grounds adjoining thereto, by the occupier or occupiers of such lands or grounds; and every person or persons who shall occupy any lands or grounds adjoining to or lying near such turnpike road through which the water hath used to pass from the said turnpike road, shall and is and are hereby required, from time to time as often as occasion shall be, to open, cleanse, and scour the ditches, watercourses, and drains for such water to pass without obstruction; and every person making default in any of the matters or things aforesaid, after ten days' notice to him, her, or them given, shall for every such offence forfeit any sum not exceeding *5l.* Ditches, &c. of sufficient depth and breadth shall be made by the occupiers of lands for keeping the roads dry. Penalty on default not exceeding *5l.*

§ 115. Enacts, that in all cases, where any gutter, drain, sink, sewer, or underdrain made or hereafter to be made under or at the sides or near any turnpike road, shall be used as well for the conveyance of the water from such turnpike road, as for conveying water, filth, or other matters from the houses or premises of the inhabitants of any town, hamlet, village, street, or place, and no specific mode of repair, or persons liable to the expenses of maintaining the same shall be appointed, the expense of maintaining and repairing such gutter, drain, sink, sewer, or underdrain shall be borne and defrayed equally or in proportions by the trustees or commissioners of such turnpike road, and the inhabitants of the town, hamlet, village, street, or place, using the same; and in order to ascertain the proportion, and recover such expenses, the surveyor of the turnpike road under, or at the sides, or near to which such gutter, drain, sink, sewer, or underdrain shall be situated, shall as often as shall be requisite repair the same, and shall then make out an account of the costs and expenses of such reparation, and produce the same to any two or more justices of the peace acting for the county or place where such gutter, drain, sink, sewer, or underdrain, or so much thereof as shall be repaired, shall lie; and it shall and may be lawful for the said justices, and they are hereby authorised and empowered, to examine the accounts and statements to be produced to them, and to enquire as to the persons using such gutter, drain, sink, sewer, or underdrain, and to proportion the amount to be paid by the trustees or commissioners of the turnpike road, and by the inhabitants and persons using such gutter, drain, sink, sewer, or underdrain respectively, and to fix and ascertain the amount of such proportion as they the said justices shall deem just and reasonable, to be paid by the said several parties respectively; and if any person or per- Expenses of repairing drains, &c. in towns to be defrayed equally between the trustees and the inhabitants. An account of the expense of repairs to be laid before two justices, who shall proportion the amount to be paid by the parties.

3 G. 4. c. 126. sons shall neglect or refuse to pay the sum directed by the said justices to be paid by him, her, or them, the same shall be levied by distress and sale of the goods and chattels of the person or persons so neglecting or refusing, by a warrant under the hands and seals of any two or more justices of the peace, acting for the county or place where such person or persons shall reside.

4 G. 4. c. 95. Surveyors may make drains, &c.

By stat. 4 *G.* 4. *c.* 95. § 67. It is enacted, that it shall be lawful for the surveyor and surveyors, and such other person and persons as shall be appointed by the trustees or commissioners of any turnpike road, from time to time to cut, make, or maintain drains or watercourses upon and through any lands lying contiguous to any such road, and also to make ditches in such places and in such manner as such surveyor and surveyors, by order of such trustees or commissioners, shall judge necessary; and make sufficient fences and barriers, and other erections, on any part or parts of the said road, in order to prevent any rivulet or current of water from flooding the same, as such surveyor or surveyors shall judge necessary; making such satisfaction to the owners or occupiers of such lands so to be used, cut through, or built upon, for the damages which they or any of them may sustain thereby, as such trustees or commissioners shall judge reasonable; and in case of any difference between such owners or occupiers, and such trustees or commissioners, touching such damages, the same shall be finally settled by any two or more justices of the peace for the county, city, or place in which such road shall lie or be situate. (*a*)

XXIII. Annoyances to be removed.

[3 G. 4. c. 126. § 114. 118. — 4 G. 4. c. 95. § 72.]

3 G. 4. c. 126. For removing and preventing annoyances.

By stat. 3 *G.* 4. *c.* 126. § 114. It is enacted, "that it shall be lawful for the surveyor of every turnpike road, and such person as he or they shall appoint, to remove and prevent all annoyances on every part of every turnpike road, by filth, dung, ashes, rubbish, or any other matter or thing whatsoever, being laid or thrown upon any turnpike road, or upon any open common or waste land within eighty feet of the centre thereof, and to dispose of the same

(*a*) A turnpike act authorised the trustees or surveyor, amongst other things, to cut any watercourses "in, through, or across any lands or grounds, in order to drain or prevent the roads from being overflowed, &c. making such reasonable satisfaction to the owners or occupiers of such grounds as to the said trustees should seem reasonable." Under this authority a drain was cut in pursuance of a plan which had been approved of by a surveyor; the order by which the drain was made was signed by a competent number of trustees, and by the chairman; in consequence of the drain having been contracted in its width towards the bottom, it straitened the passage for the water, and threw it on the adjoining land, which was thereby overflowed and damaged. The owner made no application to any meeting of the trustees for compensation, but brought an action against one of the trustees (the chairman), who had signed the order. It was decided, that the trustees having done what by the act they were required to do, in the best way according to their judgment, and the best advice that was to be procured, were not answerable for the injury which had happened; they were not answerable for a consequential injury, which they not only did not foresee, but which they had no means of foreseeing. *Sutton* v. *Clarke*, 1 *Marsh*, 429. See also *The British Plate Company* v. *Meredith*, 4 *T. R.* 794. But if an act is done arbitrarily and tyrannically, they would be answerable. *Leader* v. *Moxton and others*, 3 *Wils.* 461. 2 Blac. Rep. 924. S. C.

for the benefit of such road, in case the owner thereof shall neglect to remove the same within 12 hours after notice in writing, signed by any two trustees, or the surveyor of such road, given to such owner for that purpose, or in case the owner is not known, then after a like notice affixed for three days on the nearest turnpike gate; and to turn any watercourses, sinks, or drains running into, along, or out of any turnpike road, or any part thereof, to the prejudice of the same, and to open, scour, and cleanse any watercourses or ditches adjoining to any turnpike road, and make the same as deep and large as he shall think proper and necessary, in case the owners or occupiers of the adjoining lands shall neglect to open, scour, or cleanse such watercourses or ditches after seven days' notice in writing given for that purpose; and the charges thereof, and of removing any annoyances to be settled by any one or more justices of the peace of the county or place where such part of the turnpike road shall lie, shall be reimbursed to the said surveyor by such owners or occupiers, and the same shall be recovered in such manner as the penalties and forfeitures are hereinafter directed to be recovered; and if after the removal of any of the said annoyances, any person shall again offend in the like kind, every such person shall, for every such offence, forfeit and pay any sum not exceeding *5l.*" See § 141, 142. 3 G. 4. c. 126.

Penalty for a second offence, *5l.*

§ 118. Enacts, that if any person shall make or cause to be made any dwelling house or other building, or any hedge or other fence on or at the sides of any turnpike road, in such manner as to reduce the breadth or confine the limits thereof, or shall fill up or obstruct any ditch at the side thereof; or shall make or cause to be made any dwelling house or other building, or any hedge or other fence on any common or waste land on the side or sides of any turnpike road, within the distance of thirty feet, if within three miles of any market town, or if beyond that distance, within 25 feet from the middle or centre thereof (*a*); or shall make any drain, gutter, sink, or watercourse across, or otherwise break up or injure the surface of any turnpike road, or of any part thereof; or shall plough, harrow, or break up the soil of any land or ground, or in ploughing or harrowing the adjacent lands, shall turn his or their plough or harrow in or upon any land or ground within the distances aforesaid from the middle or centre of any turnpike road made or to be made, or make any other encroachment on any turnpike road within the distances aforesaid from the middle or centre thereof; every person so offending shall forfeit, for every such offence, 40*s.* to such person as shall make information of the same; and it shall be lawful for the trustees or commissioners who have the care of any such road, to cause such dwelling-house or other building, hedge, ditch, or fence, drain, sink, watercourse, gutter, or other encroachment to be taken down or filled up, or where any ditch shall be filled up or obstructed, to be opened and cleansed at the expense of the person or persons to whom the same shall belong; and it shall and may be lawful for any one or more justice or justices of the peace of the county where such offence shall be committed, upon proof thereof to him or them made upon oath, to levy, as well the expenses of taking down, or filling up, or cleansing such dwelling-house or other building, hedges, ditches, drains, or other encroachments as aforesaid, as the several and respective penalties hereby

Persons making encroachments on the roads by reducing the breadth or narrowing the limits thereof; or making drains across or otherwise injuring the roads; or turning the plough on the ground within a certain distance of the road; shall forfeit 40*s.*

(*a*) See § 124. *post*, p. 976.

Encroachments to be removed.

3 G.4. c.126. imposed, by distress and sale of the offender's goods and chattels, rendering the overplus (if any) to the owner on demand.

4 G.4. c.95. For preventing annoyances.

By stat. 4 *G.* 4. *c.* 95. § 72. It is enacted, that if any person or persons whomsoever shall wilfully pull down, break, injure, or damage any table of tolls put up or fixed at any toll-gate or bar on any part of any turnpike road, or wilfully or designedly deface or obliterate any of the inscriptions, letters, figures, or marks thereon; or if any person or persons shall wilfully pull up, throw down, break, injure, or damage any posts, rails, or fences placed or to be placed or put up by order of any trustees or commissioners of any turnpike road, or their surveyor or surveyors, either by the side or sides of such road, or at or near to any pit or quarry which shall be used, opened, or made for the getting of stones, gravel, or other materials for the purposes thereof, in order to prevent accidents; or if any person or persons shall wilfully cause any damage or injury to be done to any bridge, arch, wall, or other building or erection to be set up or erected by virtue of any act on any part of any turnpike road, or by the side or sides thereof; or if any person or persons shall cast or throw any earth or rubbish, or other matter or thing, into any drain, ditch, culvert, tunnel, or other watercourse made by virtue of any act, so as to obstruct the water from running or draining off any turnpike road; or if any person or persons shall, without being thereto authorised by the surveyor or surveyors for the time being acting under any act, shovel up, scrape, gather, or carry away any stones, gravel, sand, or other materials, slutch, dirt, mire, drift, or soil from off any footpath or causeway, or any other part of such road; or if any person shall in any manner wilfully prevent any other person or persons from passing him or her, or any carriage under his, her, or their care, upon any such road; or if any such person shall dig, make, or use any pit or pits for sawing of timber or wood within 30 feet of the centre of any such turnpike road, unless where enclosed by a fence from any such road; every person offending in any of the cases aforesaid shall forfeit and pay a sum not exceeding 40*s.* for every such offence; and one moiety of such penalties shall be paid to the informer, and the other moiety thereof shall be paid to the treasurer of the trustees or commissioners of such turnpike road, and applied towards the repair of such road.

XXIV. Branches of Trees and Hedges to be cut, &c.

[3 G. 4. c. 126. § 116, 117.]

3 G.4. c.126. Owners of adjoining lands to cut the hedges and branches of trees obstructing the road. *Vide ante*, Highways *in general*, § VIII. p.821.

By stat. 3 *G.* 4. *c.* 126. § 116. It is enacted, that the owners or occupiers of the land next adjoining to every turnpike road shall cut, prune, and trim their hedges to the height of six feet from the surface of the ground, and also cut down, prune, or lop the branches of trees, bushes, and shrubs growing in or near such hedges, or other fences adjacent thereto, (such fences, trees, bushes, or shrubs, not being in any garden, orchard, plantation, walk, or avenue to a house, nor any tree, bush, or shrub, being an ornament or shelter to a house, unless the same shall hang over the road, or any part thereof, in such a manner as to impede or annoy any carriage or person travelling thereon,) in such manner that the turnpike road shall not be prejudiced by the shade

thereof, and that the sun and wind may not be excluded from such turnpike road to the damage thereof; and that if such owner or occupier shall not within ten days after notice given by the surveyor for that purpose cut, prune, and trim such hedges, or cut down, prune, or trim such branches of trees, bushes, and shrubs in manner aforesaid, it shall and may be lawful for the said surveyor, and he is hereby required to make complaint thereof to some justice of the limit where such turnpike road shall lie, who shall summon the occupier of such lands before him to answer the said complaint: and if it shall appear to such justice that such occupier has not complied with the requisites of this act in that behalf, it shall and may be lawful for such justice, upon hearing the surveyor and occupier of such land or his agent, (or in default of his or her appearance, upon having due proof of the service of such summons,) and considering the circumstances of the case, to order such hedges to be cut, trimmed, and pruned, and such branches of trees, bushes, and shrubs, to be cut down, or pruned, or trimmed, in such manner as may best answer the purposes aforesaid; and if the occupier of such lands shall not obey such order within ten days after it shall have been made, and he or she shall have had due notice thereof, he or she shall forfeit the sum of 2*s.* for every 24 feet in length of such hedge which shall be so neglected to be cut, trimmed, and pruned, and the sum of 2*d.* for every tree, bush, or shrub which shall be so directed to be cut down, pruned, or trimmed; and the surveyor, in case of such default made by the occupier shall and he is hereby required to cut, prune, and trim such hedges, and to cut down, prune, or trim such branches of trees, bushes, and shrubs, in the manner directed by such order, and such occupier, shall be charged with and pay, over and above the said penalties, the charges and expenses of doing the same, or in default thereof, such charges and expenses shall be levied, together with the said forfeitures, upon his or her goods and chattels, by warrant from a justice of the peace, in such manner as is authorised for forfeitures incurred by virtue of this act.

3 G.4. c.126.

If neglected for ten days, surveyor may complain to a justice, who may order the same to be done on pain of forfeiting 2*s.* for every 24 feet in length of the hedge.

Hedges, &c. may be trimmed at the expense of defaulter.

§ 117. No person or persons shall be compelled, nor any surveyor permitted, by virtue of this act, to cut or prune any hedge at any other time than between the last day of *September* and the last day of *March*.

Time of cutting hedges and trees.

XXV. Milestones, &c. to be erected.

[3 G. 4. c. 126. § 119.]

By stat. 3 *G.* 4. *c.* 126. § 119. It is enacted, that the said trustees or commissioners shall cause stones or posts to be set up or placed in or near the sides of every turnpike road, at the distance of one mile from each other, denoting the distance of any and every such stone or post from any town or place, and also such direction-post at the several roads leading out of any such road, or at any crossings, turnings, or terminations thereof, with such inscriptions thereon denoting to what place or places the said roads respectively lead, of such height or size, and to be erected in such situations, as they the said trustees or commissioners shall think proper; and also to cause to be painted in legible characters, on some wall or board at the entrance of every town or village, the

3 G.4. c.126. Milestones and direction-posts to be erected.

Names of the towns and vil-

3 G.4. c.126.

lages to be put up at the entrance, and stones to mark the boundaries of parishes.

Penalty for defacing them, not exceeding 10*l*.

name of such town or village, and shall also cause stones to be put up marking the boundaries of parishes, where such boundaries shall cross any turnpike road, and from time to time to repair or renew such stones, posts, and boards, and keep and continue legible the inscriptions on such stones, posts, walls, and boards respectively: and if any person or persons shall wilfully break, cut down, pull up, or damage any such posts, stones, or boards, or shall obliterate, deface, spoil, or destroy all or any of the letters, figures, or marks which shall be inscribed or painted thereon, or on any such walls, and be thereof convicted before any justice of the peace for the county, city, or place where such offence shall be committed, by the confession of the party, or by the oath of one credible witness, such person or persons so offending shall forfeit and pay any sum not exceeding 10*l*. for every such offence. [And see stat. 1 *G.* 4. *c.* 56., Vol. V. tit. **Trespass.**]

XXVI. Watering Roads, and what shall be deemed the Centre.

[3 G. 4. c. 126. § 120. 124.]

3 G.4. c. 126. Extending time for watering roads.

By stat. 3 *G.* 4. *c.* 126. § 120. After reciting that whereas by several acts of parliament relating to particular turnpike roads, power is given to the trustees to water the roads during certain months in the year, and to take additional tolls on account of the said watering, and the time specified in such acts has been found in many instances too limited to afford to the public all the advantages which might be derived from watering the said roads; it is enacted, that whenever an act or acts has or have been passed to enable the trustees of any turnpike road or roads to water the same or any part thereof, and to take an additional toll for such watering during a limited time in the said act or acts specified, it shall and may be lawful for the trustees of the said road or roads, at any general meeting held for that purpose, to order that such part of the said road or roads as by the local act or acts relating to the same is allowed or directed to be watered, and a certain additional toll to be taken for such watering, shall be watered, and the said additional toll for watering the same may be demanded and taken for any time between the 1st day of *March* in every year and the 1st day of *November* following; and the said trustees shall have and they are hereby authorised to exercise and enforce all the powers, authorities, remedies, and penalties for collecting the said additional tolls for watering the roads during the time aforesaid, as they now by law have for any other tolls which may be demanded and collected on the said rolls.

What shall be deemed the centre of the road.

§ 124. After reciting that whereas doubts may arise as to what is to be deemed the road, or the centre of the road; enacts, that where, in this or any other act of parliament relating to turnpike roads, any matter or thing is directed or forbidden to be done within a certain distance of the centre of the road, that portion of ground shall be deemed and taken to be the road which has been maintained by the trustees or commissioners as *hard* road, and repaired with stones, gravel, or other materials used in forming roads, for six months immediately preceding any offence committed against such regulations; and the centre of the road shall be the middle of such hard road, where a line being drawn along

the road or a point marked, an equal number of feet of hard road which have been so maintained and repaired as aforesaid for six months before, shall be found on each side of such line or mark: Provided always, that nothing herein contained shall authorise any person or persons to enclose or make any encroachment on any waste lands or grounds lying on the side of any turnpike road, being part of the highway, and over which the king's subjects have been used and accustomed to pass; but every person who shall enclose such waste lands and grounds, or obstruct the right of passage over the same, shall continue and be subject to the same process and penalties as if this act had not been made.

3 G.4. c.126.

No encroachment to be made on the waste lands lying on the side of any road.

XXVII. Nuisances — Gates — Windmills — Dogs.

[3 G. 4. c. 126. § 121. 125. 127. — 4 G. 4. c. 95. § 76.]

By stat. 3 *G. 4. c.* 126. § 125. It is enacted, that no door or gate of any building, park, paddock, field, or enclosure whatsoever, shall be made to open into or towards any part of any turnpike road, or of any footpath belonging thereto, or be suffered to continue so to open, except the hanging-post thereof shall be fixed or placed so far from the centre of any part of such turnpike road, as that no part of such door or gate shall, when open, project over any part of such turnpike road, or any footpaths belonging thereto; and the occupier or occupiers of any building, park, paddock, field, or inclosure having any door or gate opening outwards, contrary to the meaning of this act, shall, within 14 days after notice to him, her, or them given, either personally or in writing, from the surveyor of any turnpike road, cause such door or gate to be hung so that no part of the same, when open, shall project over any part of such turnpike road, or any footpath belonging thereto; and in default thereof, the surveyor of the said turnpike road is hereby authorised to cause the door or gate to be hung according to the intention of this act; and the person or persons guilty of such neglect or default shall, upon complaint made to any justice or justices of the peace acting in and for the county or place where such neglect shall appear, and upon conviction upon the oath of one credible witness, pay to such surveyor such sum as the said justice or justices shall direct, to defray the expense of making the alteration and hanging such door or gate, and shall also forfeit a further sum not exceeding 40*s.* for his, her, or their neglect therein, to be fixed by and at the discretion of the justice or justices before whom such conviction shall be made.

3 G.4. c.126. Gates to open inwards.

Gates opening outwards to be removed.

Owner to pay the expense of removal, and forfeit not exceeding 40*s.*

§ 121. "If any person or persons shall ride upon any footpath or causeway, by the side of any turnpike road, made or set apart for the use or accommodation of foot passengers, or shall lead or drive any horse, ass, mule, swine, or cattle or carriage of any description, or any wheelbarrow, truck, or sledge, or any single wheel of any waggon, cart, or carriage apart therefrom, upon any such footpath or causeway, or shall cause any injury or damage to be done to the same, or the hedges, posts, rails, or fences thereof, or shall wilfully pull down or damage any bridge, wall, or any other building or erection made by the trustees or commissioners of any turnpike road, or repaired or repairable by them (*a*); or shall haul or draw or cause to be hauled or drawn upon any part of such turnpike road any timber, stone, or other

Penalty on persons committing nuisances, by riding on footpaths, or damaging bridges, &c.; by drawing timber, &c.;

(*a*) *Vide* 4 G.4. c.95. § 66. *ante*, p.933.

3 G. 4. c. 126.

thing, otherwise than upon wheeled carriages, or shall suffer any timber, stone, or other thing, which shall be carried principally or in part upon wheeled carriages, to drag or trail upon such road to the prejudice thereof; or shall use any tipstick, joggle, or other instrument for the purpose of retarding the descent of any cart or other carriage down any hill, in such manner as to destroy, injure, or disturb the surface of any turnpike road; or shall in or upon such road, or by the side or sides thereof, or in any exposed situation near thereto, kill, slaughter, singe, scald, burn, dress, or cut up any beast, swine, calf, lamb, or other cattle; or if any person driving any horse or other beast on the said road, carrying any iron bar or rod, basket or pannier, or any other matter or thing, shall place such bar or rod, basket or pannier, matter or thing, so that the same or any of them shall project more than 30 inches from the side of such horse, or other beast, or so as in any manner to obstruct or impede the passage of any person, or any horse, beast, or carriage travelling along such turnpike road; or if any hawker, higgler, gipsy, or other person or persons travelling with any machine, vehicle, cart, or other carriage, with or without any horse, mule, or ass, shall pitch any tent, booth, stall, or stand, or encamp upon or by the sides of any part of any turnpike road; or if any blacksmith, or other person occupying a blacksmith's shop situate near any turnpike road, and having a window or windows fronting the said road, shall not, by good and close shutters every evening after it becomes twilight, bar and prevent the light from such shop shining into or upon the said road; or if any person or persons shall make or assist in making any fire or fires commonly called bonfires, or shall set fire to or wantonly let off or throw any squib, rocket, serpent or other firework whatsoever, *within eighty feet* of the centre of such road; or bait or run for the purpose of baiting any bull, or play at football, tennis, fives, cricket, or any other game or games upon such road, or on the side or sides thereof, or in any exposed situation near thereto, to the annoyance of any passenger or passengers; or if any person shall leave any waggon, wain, cart, or other carriage whatever upon such road, or on the side or sides thereof, without any proper person in the sole custody or care thereof, longer than may be necessary to load or unload the same, except in cases of accident, and in cases of accident for a longer time than may be necessary to remove the same, or shall not place such waggon, wain, or other carriage during the time of loading or unloading the same, or of taking refreshment, as near to one side of the road as conveniently may be, either with or without any horse or beast of draught harnessed or yoked thereto; or shall lay any timber, stone, hay, straw, dung, manure, soil, ashes, rubbish, or other matter or thing whatsoever upon such road, or on the side or sides thereof, or the footpaths or causeways adjoining, to the prejudice of such road or footways, or to the prejudice, annoyance, interruption, or personal danger of any person or persons travelling thereon; or shall suffer any water, filth, dirt, or other offensive matter or thing whatsoever, to run or flow into or upon such road or footpaths, from any house, building, erection, lands or premises adjacent thereto; or if any person driving any pigs or swine upon such road shall suffer such pigs or swine to root up or damage such road, or the fences, hedges, banks, or copse on either side thereof respectively; or if

by injuring the road;

by slaughtering of cattle;

by obstructing passage of travellers;

by light of blacksmiths' shops;

by making bonfires;

by baiting bulls, playing at football, or other games;

by leaving waggons, &c.;

by laying timber, &c.;

by running of water or filth;

by swine;

any person shall, after having blocked or stopped any cart, waggon, or other carriage in going up a hill or rising ground, cause or suffer to be or remain on such road the stone or other thing with which such cart or other carriage shall have been blocked or stopped; or if any person or persons shall pull down, damage, injure, or destroy any lamp or lamp-post put up, erected, or placed in or near the side of any turnpike road or toll-house erected thereon, or shall extinguish the light of any such lamp, every person offending in any of the cases aforesaid shall for each and every such offence forfeit and pay any sum not exceeding 40*s.* over and above the damages occasioned thereby." (*a*)

3 G.4. c.126.

by leaving block stones, &c.; or by damaging lamps.

§ 127. Enacts, "that no person shall hereafter erect or cause any windmill to be erected within the distance of 200 yards from any part of any turnpike road, under the penalty of 5*l.* for each and every day such windmill shall continue: Provided always, that nothing therein contained shall be construed to render legal the re-erection or continuance of any windmill in any case where by the common law such windmill shall be a public or private nuisance."

No windmill to be erected within 200 yards.

By stat. 4 *G.* 4. *c.* 95. § 76. It is enacted, that if any person or persons, having the care of any waggon, wain, cart, or other such carriage conveying goods for hire or reward, or for sale, on any turnpike road, shall not chain or fasten any dog that may be attending him or them on such road, to such waggon, wain, cart, or carriage, every person so offending shall forfeit and pay any sum not exceeding 20*s.*

4 G.4. c.95. Carriers' dogs to be fastened to the carriage.

XXVIII. Cattle straying may be impounded.

[3 G. 4. c. 126. § 123. — 4 G. 4. c. 95. § 75.]

By stat. 4 *G.* 4. *c.* 95. § 75. It is enacted, that if any horse, ass, sheep, swine, or other beast or cattle of any kind, shall at any time be found tethered, or wandering, straying, or lying about any turnpike road, or on any part thereof (except on such parts of any road as lead or pass through or over any common or waste or uninclosed ground), it shall and may be lawful for any surveyor of the road where the same shall be found, or any other person or persons whomsoever, to seize and impound every such horse, ass, sheep, swine, or other beast or cattle, in the common pound (if any) of the parish, township, tithing, or place where the same shall be found, or in such other place as the trustees or commissioners of the road where the same shall be found shall have provided or shall provide for that purpose, and the said horse, ass, sheep, swine, or other beast or cattle there to detain, until the owner or owners thereof shall, for every and each horse, ass, sheep, swine, or other beast or cattle so impounded, pay the sum of 2*s.*, together with the reasonable charges and expenses of impounding and keeping the same, to the treasurer, clerk, or surveyor of the road on which the beast so impounded shall have been found; the said sum of 2*s.* for each beast to be applied to the use of and in aid of the tolls of such road; and in case the said penalty, charges, and expenses shall not be paid within five days after such impounding, (notice being thereof first given to the owner, if known at the time,

4 G.4. c.95. Cattle found straying on the roads to be impounded.

(*a*) *Vide* 4 *G.*4. *c.*95. § 72. *ante*, p. 974. See also *R.* v. *White*, 1 *Burr.*333.



hand and seal, to the common gaol or house of correction of such of the said counties wherein the said offence shall have been committed, there to remain without bail or mainprize for any time not exceeding three calendar months. 3 G.4. c.126.

XXIX. Skid-pans to be used.

[3 G. 4. c.126. § 126.]

By stat. 3 *G.* 4. *c.* 126. § 126. It is enacted, that it shall and may be lawful to and for the trustees or commissioners of every turnpike road, at any meeting to be held for that purpose, on ten days' notice in writing of such meeting being affixed upon the turnpike gates on the road, and they are hereby authorised and empowered, from time to time, as they shall think fit, to order and direct that in all cases where any waggon or cart shall descend any hill or hills on the said road, with either of the wheels locked, a skid-pan or slipper shall be used or placed at the bottom of such wheel during the whole time of its being so locked, in such manner as to prevent the said road from being destroyed or injured by the locking of such wheel; and it shall and may be lawful for the said trustees or commissioners from time to time to repeal, alter, or renew such order as they shall think necessary; and whilst any such order so to be made as aforesaid shall be in force, all and every person or persons who shall drive or act as the driver of any waggon or cart down any hill or hills with either of the wheels locked, and without using or having such skid-pan or slipper at the bottom of such wheel, in manner aforesaid, shall, for every such offence, forfeit any sum not exceeding 20*s.*: Provided always, that a copy of such order shall be affixed on all the turnpikes standing on such road, for 30 days at least before the same shall be in force.

3 G.4. c.126. Directing the using of skid-pans or slippers.

Penalty on driver not using them not exceeding 20*s.*

XXX. Destroying Turnpike Gates, and doing other Damage. — Resisting the Execution of this Act.

[3 G. 4. c. 126. § 139. — 7 & 8 G. 4. c. 24. § 16. — c. 27. § 1. — c. 30. § 14.]

By stat. 7 & 8 *G.* 4. *c.* 27. § 1. So much of 3 *G.* 4. *c.* 126. as made it a felony to destroy turnpike gates, &c. is repealed.

7 & 8 G.4. c.27. Repeal of 3 G.4. c. 126. § 128.

By stat. 7 & 8 *G.* 4. *c.* 30. § 14. If any person shall unlawfully and maliciously throw down, level, or otherwise destroy, in whole or in part, any turnpike-gate, or any wall, chain, rail, post, bar, or other fence belonging to any turnpike-gate, or set up or erected to prevent passengers passing by without paying any toll directed to be paid by any act or acts of parliament relating thereto, or any house, building, or weighing engine erected for the better collection, ascertainment, or security of any such toll, every such offender shall be guilty of a misdemeanor, and, being convicted thereof, shall be punished accordingly.

7 & 8 G.4. c.30. Destroying a turnpike-gate, toll-house, &c.

By stat. 3 *G.* 4. *c.* 126. § 139. In case any person or persons shall resist or make forcible opposition against any person or persons employed in the due execution of this act, or any particular act made for amending any turnpike road, or shall assault any surveyor or any collector or collectors of the tolls, in the execution of his or their office or offices, or shall pass through any turnpike

3 G.4. c.126. Persons resisting the execution of this act, or assaulting collectors, to forfeit not exceeding 10*l.*

horse each, and the horse of the hinder cart shall be attached by a rein or reins to the back of the cart which shall be foremost; and in case the said horse shall not be so attached, the driver of the said carts shall forfeit the sum of 20*s.*, to be recovered as other penalties are by this act to be recovered: Provided also, that this enactment shall not extend, or be construed to extend, to carts travelling on any turnpike road within ten miles from the cities of *London or Westminster*. 3 G.4. c.126. Not to extend to carts within ten miles of London.

§ 131. After reciting, that whereas numbers of carts and waggons, and frequently more than one, are entrusted to the care of children, who are unable to guide the horses drawing the same, enacts, "that no cart or waggon travelling on any turnpike road shall be driven by any person or persons who shall not be of the full age of 13 years, under a penalty not exceeding 10*s.*, to be paid by the owner of such cart or waggon." Children not to drive carts, &c. on penalty of 10*s.*

§ 132. After reciting, that whereas many accidents happen, and great mischiefs are frequently done, upon streets and highways, being turnpike roads, by the negligence or wilful misbehaviour of persons driving carriages thereon, enacts, "that if the driver of any waggon or cart of any kind shall ride upon any such carriages in any turnpike road, not having some other person on foot or on horseback to guide the same, (such light carts as are usually driven with reins, and are then conducted by some person holding the reins of the horse or horses, not being more than two drawing the same, excepted;) or if the driver of any carriage whatsoever on any part of any turnpike road shall, by negligence or wilful misbehaviour, cause any hurt or damage to any person or carriage passing or being upon such road; or shall quit the road and go on the other side the hedge or fence enclosing the same, or wilfully be at such distance from such carriage, or in such a situation whilst it shall be passing upon such turnpike road that he cannot have the direction and government of the horses or cattle drawing the same; or if any person shall drive, or act as the driver of any such coach, post-chaise, or other carriage let for hire, or waggon, wain, or cart, not having the owner's name as hereby required painted thereon, or shall refuse to discover the true christian and surname of the owner or principal owners of such respective carriage; or if the driver of any waggon, cart, coach, or other carriage whatsoever, meeting any other carriage, shall not keep his or her carriage on the left or near side of the road, or if any person shall in any manner wilfully prevent any other person or persons from passing him or her, or any carriage under his or her care upon such road, or by negligence or misbehaviour prevent, hinder, or interrupt the free passage of any carriage, or of H. M.'s subjects, on any turnpike road, every such driver so offending in any of the cases aforesaid, and being convicted of any such offence, either by his own confession, the view of a justice of the peace, or by the oath of one or more credible witness or witnesses, before any justice of the peace of the limit where such offence shall be committed, or where such offender shall be apprehended, shall, for every such offence, forfeit any sum not exceeding 40*s.*, in case such driver shall not be the owner of such carriage; and in case the offender be the *owner* of such carriage, then any sum not exceeding 5*l.*; and in either of the said cases shall, in default of payment, be com- Drivers of waggons or carts not to ride thereon unless some other person on foot guide the same. Drivers of any carriage causing hurt or damage to others; or quitting the road; or driving carriage without owner's name; or not keeping the left or near side; or interrupting free passage; the driver, if not the owner, to forfeit 40*s.*; if he be the owner, 5*l.*

such offender or offenders according to the provisions of this or any other acts for repairing turnpike roads." 3 G.4. c.126.

XXXIV. Prosecutions — Recovery and Application of Penalties.

[3 G. 4. c. 126. § 133. 137, 138. 141. 143, 144. — 4 G. 4. c. 95. § 69. 83, 84. — 9 G. 4. c. 77. § 2. 18.]

By stat. 3 *G.* 4. *c.* 126. § 133. It is enacted, that the trustees or commissioners of any turnpike road, at a public meeting, may, and they are hereby empowered, if they think fit, to direct prosecutions by indictment, or otherwise, against the offender or offenders for any nuisance or other offence done, committed, or continued in or upon any of the turnpike roads under their care respectively, or to recover any penalty or forfeiture incurred under the provisions of this or any other turnpike act, at the expense of the revenues belonging to such turnpike roads, to be allowed by such trustees or commissioners at some subsequent meeting. 3 G.4. c.126. Trustees or commissioners may direct prosecutions for nuisances, &c.

By stat. 4 *G.* 4. *c.* 95. § 83. It is enacted, that in all cases in which by the said recited act any penalty or forfeiture, by that or any other act or acts for making or maintaining any turnpike road imposed, is made recoverable by information before a justice of the peace, it shall and may be lawful for any justice of the peace to whom complaint shall be made of any offence against any such act, or the said recited act or this act, to summon the party complained against before him, and on such summons to hear and determine the matter of such complaint, and on proof of the offence to convict the offender, and to adjudge him to pay the penalty or forfeiture incurred, and to proceed to recover the same, although no information in writing shall have been exhibited or taken by or before such justice; and all such proceedings by summons without information shall be as good, valid, and effectual, to all intents and purposes, as if an information in writing was exhibited. 4 G.4. c.95. Justices may proceed by summons in the recovery of penalties.

By stat. 3 *G.* 4. *c.* 126. § 137. It is enacted, that no conviction shall be had or made by virtue of this act, unless upon the view of a justice convicting, or on confession of the party accused, or upon the oath of one or more credible witness or witnesses, and any inhabitant of any parish, township, or place in which any offence shall be committed contrary to this act, shall not be deemed an incompetent witness by reason of his or her being an inhabitant of such parish, township, or place: and any justice of the peace may act in the execution of this act, notwithstanding he may be a creditor, or a trustee or commissioner for making, repairing, and maintaining the roads on which any offence contrary to this act shall be committed. 3 G.4. c.126. Inhabitants good witnesses.

By stat. 4 *G.* 4. *c.* 95. § 84. It is enacted, that no person shall be deemed incompetent to give evidence, or be disqualified from giving testimony or evidence in any action, suit, prosecution, or other legal proceedings to be brought or had in any court of law or equity, or before any justice or justices of the peace under or by virtue of any act for making or maintaining any turnpike road, or the said recited act or this act, by reason of being a trustee or 4 G.4. c.95. Trustees, &c. may be witnesses.



ceeding three calendar months, unless such penalties, forfeitures, and fines, and all reasonable charges attending the same, shall be sooner paid and satisfied; and the monies arising by such penalties, forfeitures, and fines respectively, when paid or levied, if not otherwise directed to be applied by this act, shall be from time to time paid, one moiety thereof to the informer or person suing for and recovering the same, and the other moiety to the treasurer or treasurers, to the trustees or commissioners for repairing and maintaining the road on which such offence shall have been committed, and applied and disposed of for the purposes of such road and of this act. 3 G.4. c.126.

By stat. 4 *G.* 4. *c.* 95. § 69. It is enacted, that where by stat. 3 *G.* 4. *c.* 126., or any act for making or maintaining any turnpike road, any damages or charges are directed or authorised to be paid or recovered in addition to any penalty or penalties, for any offence or offences, the amount of such damages or charges in case of dispute respecting the same shall be settled, ascertained, and determined by the justice or justices of the peace by or before whom any offender shall be convicted of any such offence or offences, who is hereby authorised and required, on nonpayment thereof, to levy such damages or charges by distress and sale of the offender's goods and chattels, in manner directed by stat. 3 *G.* 4. *c.* 126. for the levying of any penalties or forfeitures. 4 G.4. c.95.

By stat. 3 *G.*4. *c.* 126. § 143. Every prosecutor or informer shall sue for and recover any forfeiture or penalty imposed by this or any other act or acts of parliament made for erecting turnpikes, or for repairing and amending turnpike roads, in the manner hereinafter mentioned; (that is to say,) if the same shall exceed the sum of 20*l.*, or upwards, it shall be recoverable by action of debt in any of H. M.'s courts of record, in which it shall be sufficient to declare that the defendant is indebted to the plaintiff in the sum of ———, being forfeited by an act passed in the third year of the reign of H. M. King *George* the fourth, intituled *An act* [*here set forth the title of this act, if the offence shall be committed under it*, or, *An act, &c. setting out the title of the act under which the penalty shall be claimed*]; and the plaintiff, if he recover in any such action, shall have full costs, provided that there shall not be more than one recovery for the same offence, and that 21 days' notice be given to the party offending, previous to the commencement of such action, and that the same be brought and commenced within three calendar months after the offence for which such action is brought shall have been committed; and if such penalty or forfeiture shall not exceed the sum of 20*l.*, and shall be more than 5*l.*, the same shall be recoverable only by information before a justice of the peace, subject to appeal in manner hereinafter mentioned; and if such penalty or forfeiture shall not exceed the sum of 5*l.*, the same shall in like manner be recoverable only by information before a justice of the peace, and no writ of *certiorari* to remove the same shall be allowed. See 4 *G.* 4. *c.* 95. § 83., *ante*, p. 985. 3 G.4. c.126. Prosecutors may recover by information, or by action, &c. *Ante*, p. 898.

§ 144. Where any distress shall be made for any sum or sums of money to be levied by virtue of this act, or any other act for repairing, amending, or maintaining any turnpike road, the distress itself shall not be deemed unlawful, nor the party or parties making the same be deemed a trespasser or trespassers on account of any Party aggrieved may recover satisfaction for special damages.

3 G.4. c.126.

default or want of form in any proceeding relating thereto; nor shall the party or parties distraining be deemed a trespasser or trespassers, *ab initio*, on account of any irregularity which shall be afterwards done in making the distress; but the person or persons aggrieved by such irregularity may recover the satisfaction for the special damage in an action on the case: Provided always, that no plaintiff shall recover in any action for such irregularity, trespass, or wrongful proceedings, if tender of sufficient amends shall be made by or on behalf of the party who shall have committed or caused to be committed any such irregularity or wrongful proceedings, before such action brought; and in case no such tender shall have been made, it shall and may be lawful for the defendant in any such action, by leave of the court where such action shall depend, at any time before issue joined, to pay into court such sum of money as he shall see fit; whereupon such proceedings, or orders and judgment, shall be had, made, and given in and by such court as in other actions where the defendant is allowed to pay money into court. See *Wallace* v. *King*, 1 *H. Blac.* 13.

Tender of amends.

9 G.4. c.77. Offences to be prosecuted within six months.

By stat. 9 *G.*4. *c.*77. § 18. No person or persons shall be convicted of any offence or offences contrary to the provisions of this act, or of the said recited acts, (3 *G.*4. *c.*126.— 4 *G.*4. *c.*95. and 7 & 8 *G.*4. *c.* 24.) or of any local turnpike act, in a summary way, before any justice or justices of the peace, after the expiration of six months from the time when any such offence or offences shall have been committed.

Books of accounts and proceedings to be received in evidence, without proving their contents, notwithstanding the act under which they have been kept is repealed; and to be open to inspection.

And by the same statute, § 2. All books kept for registering mortgages or assignments, and all entries therein, and all books containing the accounts and proceedings of the trustees in the execution of any local turnpike act, kept according to the directions and provisions of any such act, or of the said recited act of the third year of the reign of his present majesty or of this act, and made evidence thereby, shall be admitted in evidence in all courts, and by all judges, justices, and others, without proving the facts therein contained, unless such facts, or any of them, shall be first controverted, notwithstanding any former act, under the provisions of which such books may have been originally kept, may be repealed; and all such books shall be preserved and kept by the clerk for the time being of such trustees, and shall at all seasonable times be open to the inspection of the said trustees, and of any creditor or creditors of the tolls, without fee or reward: and the said trustees and creditors, or any of them, shall and may take copies of or extracts from the said book or books, or any part or parts thereof respectively, without paying any thing for the same; and in case the clerk to the said trustees shall refuse to permit, or shall not permit, the said trustees, or such creditors, or any of them, to inspect the said book or books, or to take such copies or extracts as aforesaid, such clerk shall forfeit and pay any sum of money not exceeding *5l.* for every such offence.

XXXV. Appeal.

[4 G. 4. c. 95. § 87.]

4 G.4. c.95. Persons aggrieved may appeal.

By stat. 4 *G.*4. *c.* 95. § 87. It is enacted, that if any person shall think himself or herself aggrieved by any order, judgment,

or determination made, or by any matter or thing done by any justice or justices of the peace, or by any trustees or commissioners of any turnpike road in pursuance of this act, or the said recited act, (3 *G.* 4. *c.* 126.) or any local act for making, repairing, or maintaining any turnpike road, (except where the order, judgment, or determination of any such justice or justices, trustees or commissioners, are hereby declared to be final and conclusive, and except under the particular circumstances hereinafter mentioned,) and for which no particular method of relief hath been already appointed, such person may appeal to the justices of the peace at the next general or quarter sessions of the peace to be held for the county, division, riding, or place wherein the cause of such complaint shall arise, such appellant first giving or causing to be given to such justice, commissioner, or trustee, by whose act or acts such person shall think himself or herself aggrieved, notice in writing (No. 23.) of his or her intention to bring such appeal, and of the matter thereof, within six days after the causes of such complaint shall arise, and within four days after such notice entering into recognisances before some justice of the peace, with two sufficient sureties, conditioned to try such appeal at, and abide the order of, and pay such costs as shall be awarded by the justices at such general or quarter sessions, and also to pay the penalty or forfeiture in case the conviction should be affirmed; and each and every justice of the peace, commissioner, or trustee, having received notice of such appeal as aforesaid, shall return all proceedings whatever had before him respectively, touching the matter of such appeal, to the said justices at their general or quarter sessions aforesaid; and the said justices at such sessions, upon due proof of such notice having been given as aforesaid, and of such recognisance having been entered into in manner before directed, shall hear and finally determine the causes and matters of such appeal in a summary way, and award such costs to the parties appealing or appealed against as they the said justices shall think proper, to be levied and recovered by distress and sale of the goods and chattels of the person or persons against whom such determination shall be given, and the determination of such general or quarter sessions shall be final and conclusive to all intents and purposes; and no proceeding to be had or taken in pursuance of this act shall be quashed or vacated for want of form, or removed by *certiorari* or any other writ or process whatsoever, into any of H. M.'s courts of record at *Westminster*; any law or statute to the contrary notwithstanding: Provided, that in case there shall not be time to give such notice, and enter into such recognisances as aforesaid, before the next sessions to be holden after the conviction of the appellant, then and in every such case such appeal may be made to the next following sessions, and shall be there heard and determined: Provided always, that no appeal shall be allowed against any conviction for any penalty or forfeiture which shall not exceed the sum of 40*s*.

4 G.4. c.95.

grieved may appeal to quarter sessions.

Proceedings not to be removed by certiorari.

XXXVI. Power to administer Oaths.

[3 G. 4. c. 126. § 146.]

By stat. 3 *G.* 4. *c.* 126. § 146. It is enacted, that where any oath or affirmation is by this or any act relating to any turnpike

3 G.4. c.126. Power to administer oaths.



croach upon, vary, alter, or interfere with any of the tolls, weights, or duties created by virtue of the said acts or any of them, or any of the powers and authorities given to or vested in the trustees acting under or by virtue of the said acts, or any or either of them. 3 G.4. c.126.

§ 150. Nothing herein contained shall be construed to extend to an act passed in the 56 G. 3., intituled *An act for improving the road from the city of* Glasgow, *to the city of* Carlisle, or to three several acts amending the same, passed in the 58 & 59 G. 3. and 1 & 2 G. 4. Nor to 56 G.3. c.lxxxiii. for improving the road from Glasgow to Carlisle, or, &c.

By stat. 4 G.4. c. 95. § 90. Nothing in stat. 3 G.4. c. 126., or this act, shall extend to any road not under the care and management of trustees or commissioners, or to any road which shall be made, maintained, or supported under the provisions of any act or acts, passed for an unlimited period, notwithstanding tolls may be collected on such roads, or shall extend to affect, alter, or interfere with the qualifications of any commissioners or other persons having the care and management of any such last-mentioned roads, or with any tolls taken, or weights carried thereon, or in any other manner therewith. 4 G.4. c.95. Act not to extend to certain roads.

§ 91. Nothing in stat. 3 G.4. c. 126., or in this act, shall extend to stat. 59 G. 3. c. 30., *for vesting in commissioners the line of road from* Shrewsbury *to* Bangor Ferry; nor to stat. 59 G. 3. c. 48., *for repairing roads between* London *and* Holyhead, *by* Chester, *and between* London *and* Bangor, *by* Shrewsbury, *and for giving additional powers to the commissioners therein named, to build a bridge over the* Menai Straits, *and to make a new road from* Bangor Ferry *to* Holyhead, *in the county of* Anglesea; nor to any road or roads repaired, maintained, and supported under the powers of the said acts. 3 G.4. c.126. or 4 G.4. c.95. not to extend to 59 G.3. c.30., or 59 G.3. c.48., or roads repaired under them.

§ 92. Nothing in this act contained shall extend to the turnpike road called the *Commercial Road*, or the several branches leading from and out of the same, authorised by virtue of five several acts passed in the 43, 44, 46, 49, & 51 G. 3., for making and maintaining the roads communicating with the *West* and *East India* docks, and for repairing the *Cannon Street Road*, and for making and maintaining a new road to *Barking*, and a road from the *Romford* and *Whitechapel Road* to *Tilbury Fort*, in the counties of *Middlesex* and *Essex*, and also for making a new branch of road from *King David Lane*, *Shadwell*, to the *Essex Road* at *Mile End*, in the county of *Middlesex*, or to affect, encroach upon, vary, alter, or interfere with any of the tolls, weights, or duties created by the said acts. 4 G.4. c.95. not to extend to the Commercial Road, or, &c.

§ 93. Provided always, that so much of the turnpike road from *Carlisle* to *Glasgow* as lies in the county of *Cumberland* shall, from and after the passing of this act, be subject to the regulations, powers, and provisions of the said act, 3 G. 4. c. 126., and this act, so far as the same respects nuisances, annoyances, and trespasses; and the justices of the peace acting for the county of *Cumberland* are hereby authorised and empowered to enforce all penalties for nuisances, annoyances, and trespasses on the said road.

XXXIX. Consent to Turnpike Bill may be signified by Affidavit.

[3 G. 4. c. 126. § 151, 152, 153.]

3 G.4. c.126. Parties interested may signify their consent to any turnpike bill by affidavit.

By stat. 3 *G.* 4. *c.* 126. § 151. It is enacted, that all persons concerned or interested in any bill for making or repairing any turnpike road, or for widening or diverting such road, may signify their consent to the same by affidavit, taken and authenticated according to the form hereinafter prescribed, unless the committee of either house of parliament to whom such bill, or the petition of such bill, shall be referred, shall otherwise order.

Justices of the peace or masters extraordinary in chancery empowered to take all such affidavits.

§ 152. Enacts, that it shall and may be lawful for any one or more justice or justices of the peace, or master or masters extraordinary in chancery, to take affidavits on oath or affirmation (which oath or affirmation such justice or justices, or master or masters extraordinary in chancery is and are hereby authorised and empowered to administer) of the answers that may be given by the owners and occupiers of lands, on applications made to them for their consent to such bills; and every affidavit shall be in the form following, as near as the circumstances of the case will admit: —

A. B. *of* ——, *maketh oath, and saith, that he did apply to* C. D., *who he believes to be the owner of* [set out the property] *being part of the lands through which the intended turnpike road from* E. *to* F. *is to be carried, or the alteration to be made* [as the case may be], *and that he received from such owners the answers set forth in the paper hereunto annexed.*

(Signed) A. B.

Sworn [or, *solemnly affirmed*] *before me* [as in the other forms herein-before set forth].

As witness my hand and seal.

Affidavit not liable to stamp-duty.

And no such affidavit as aforesaid shall be subject or liable to any stamp duty now payable by any act or acts of parliament, or which shall hereafter be imposed, unless specially named and made subject thereto by the act or acts of parliament imposing the same.

Proof of hand-writing of justice to be deemed sufficient.

§ 153. Enacts, that proof of the hand-writing of any justice of the peace, or master extraordinary in chancery, before whom any such affidavit shall be made as aforesaid, shall be sufficient evidence of the signature of such justice or master extraordinary before any committee of either house of parliament, without any witness being produced who was present at the time when such affidavit was made, and without a witness being produced to prove that such justice of the peace, or master extraordinary in chancery, before whom such affidavit was made, was, at the time of making such affidavit, a justice of peace or master extraordinary in chancery.

XL. Forms of Proceedings.

[3 G. 4. c. 126. § 148.]

By stat. 3 *G.* 4. *c.* 126. § 148. It is enacted, "that the forms of proceeding relative to the several matters contained in this act, which are set forth and expressed in the schedule hereunto annexed, may be used upon all occasions, with such additions and variations only as may be necessary to adapt them to the particular exigencies of the case, and that no objection shall be made or advantage taken for want of form in any such proceedings by any person or persons whomsoever.

3 G. 4. c. 126. Forms in the schedule annexed to be used.

The Schedule to which Stat. 3 *G.* 4. *c.* 126. refers; containing the Forms of Proceedings mentioned in the foregoing Act.

No. 1.—Order of Trustees for erecting a Weighing Engine. No. 1.

AT a meeting of the trustees of the turnpike roads under an act passed in the ——— year of the reign of his majesty King George *the* ———, for [state the title of the act], *held at* ———, *the* ——— *day of* ———.

In pursuance of the powers given to us by an act passed in the third year of the reign of his majesty King George *the fourth,* for regulating turnpike roads, *we do hereby order that an engine proper for the weighing of carriages of the construction and weights specified in the said act, be forthwith erected at or as near as conveniently may be to the toll-gate or bar now erected upon the said turnpike road at* ———; *and that* A. B., *the* [*treasurer, clerk,* or] *surveyor of the said turnpike road, do contract with some proper person* [or, *with* C. D.] [in case the trustees shall think fit to name the person] *for the making and erecting such engine, and do inspect and take care that the same is properly done; and we do order the gatekeeper at the said gate or bar for the time being to attend the said weighing engine, and carefully to weigh all carriages passing loaded upon the said road, at the place where such engine shall be erected, together with the loading thereof, and to take the several additional tolls or rates for overweight, and give tickets of the weight of such carriages and loading, when required by the driver thereof, and also to enter in a separate book, to be kept by him for that purpose, an account of every carriage so weighed, which shall with the loading exceed the weights allowed by the said act, and account to us for the money received for all such overweight.*



No. 4.—Notice of a Meeting of Trustees for ordering a Side Gate to be erected. *Vide ante*, p. 959. 3 G. 4. c. 126. No. 4.

NOTICE is hereby given, that the trustees of the turnpike roads, under an act passed in the ——— year of the reign of King George *the* ———, for [state the material parts of the title of the act], *will meet at the house of* ———, *at* ———, *on the* ——— *day of* ——— *next, at the hour of* ———, *in the* ———*noon, in order to consult about erecting a toll-gate on the side of the said turnpike road, at or near a place called* ———, *across a certain highway there, leading to* ———. *Dated the* ——— *day of* ———.

A. B., *Clerk to the said trustees.*

No. 5.—Order of the Trustees for erecting a Side Gate. *Vide ante*, p. 959. No. 5.

AT a meeting of the trustees of the turnpike roads, under an act passed in the ——— *year of the reign of King* George *the* ———, for [here state the material parts of the title of the act], *being assembled this* ——— *day of* ———, *to enforce the directions of an act passed in the ninth year of the reign of King* George *the fourth*, to amend the acts for regulating turnpike roads, [as far as the same respects the erecting of side gates.]

In pursuance of public notice given in writing upon all the toll-gates erected on the said road, and also in the ——— *newspapers circulated in this part of the country, for fourteen days now last past, we do order, that a toll-gate shall be erected on the side of the said turnpike road, at or near a place called* ———, *across a certain highway there, leading to* ———, *and that the following toll be taken at the said gate,* videlicet [here insert the particular tolls to be taken at the said side gate].

No. 6.—Notice for letting Tolls. *Vide ante*, p. 961. No. 6.

NOTICE is hereby given, that the tolls arising at the toll-gate [or, *toll-gates*, if more than one,] *upon the turnpike road at* ———, *called or known by the name of the* ——— *gate, will be let by auction to the best bidder, at the house of* ———, *at* ———, *on the* ——— *day of* ——— *next, between the hours of* ——— *and* ———, *in the manner directed by the act passed in the third year of the reign of his majesty King* George *the fourth*, for regulating turnpike roads, *which tolls produced the last year the sum of* ——— *above the expenses of collecting them, and will be put up at that sum; whoever happens to be the best bidder must, at the same time, pay one month in advance* (if required) *of the rent at which such tolls may be let, and give security, with sufficient sureties, to the satisfaction of the trustees of the said turnpike road, for payment of the rest of the money monthly* [or in such other proportions as shall be directed].

A. B., *Clerk to the trustees of the said turnpike road.*



every year, which the said A. B. *doth hereby for himself and his heirs agree to pay accordingly, so long as the said road shall be so repaired by the said trustees as aforesaid.* 3 G. 4. c. 126.

[Or, if it shall be agreed that *A. B.* shall keep the road in repair upon having an annual allowance in money or statute duty from the said trustees, let the agreement be varied and adapted to the case.]

No. 9. — Magistrates' Summons. *Vide ante*, p. 965. No. 9.

To the surveyors of the highways of the parish of ———, in the county of ———.

UPON application made by ———, *surveyor of the turnpike roads from* ———, *appointed by the trustees for putting into execution an act of parliament passed in the* ——— *year of the reign of his majesty King* George *the* ———, *intituled* An act ———, *by order of the trustee for the said road to us, two of his majesty's justices of the peace acting in and for the said county; we do hereby summon you, the surveyors of the highways of the parish or place of* ———, *in the said county, to deliver a list to the said* ———, *as such surveyor as aforesaid, at his house, situate in the said county, within* ——— *days after the service of this summons, of the names of the several persons, inhabitants of the said parish or place, and who are by law subject and liable to do statute work for the present year upon the road situate in the said parish or place, or to the payment of any money in lieu of or as a composition for such statute work, distinguishing the nature of the work to be done, whether with teams or draughts or otherwise, and also the amount of the respective sums to be paid; and we the said justices do hereby require you to make such lists of names, in such manner and under such regulations and restrictions as is or are directed by any law or statute now in force and effect for the repair of the public highways.*

And in case you shall refuse or wilfully neglect to give in such list as aforesaid, or shall knowingly or wilfully give in a false or imperfect list, you so offending will for every such offence forfeit and be liable to pay a sum not exceeding 10*l*. *Given under our hands and seals, this* ——— *day of* ———.

No. 10. Notice to be given to Surveyors of Highways. *Vide ante*, p. 965. No. 10.

To the surveyors of the highways of the parish or place of ———, in the county of ———.

I DO hereby give you notice, that the list delivered by you to me as surveyor of the turnpike road from ——— *to* ———, *in the said county of* ———, *of the names of the several persons who within your said parish or place are by law liable to do statute work for the present year, or to the payment of money in lieu of or as a composition for such statute work, will be laid before two of his majesty's justices of the peace for the said county, in pursuance of the directions of the act passed in the* ——— *year of his majesty King* George *the* ———, *intituled* An act ———, *on the* ——— *day of* ———,



and have a considerable revenue for their support, arising from the tolls collected thereupon; and we having duly summoned C. D., *the surveyor of the said turnpike road, to appear before us, to show cause why the said statute duty called forth and applied by him to the repair of the said turnpike road, should not be withdrawn therefrom and applied to the repair of the other highways within the said* [*parish, &c.*] *and upon hearing the said* C. D., *and receiving an account of the revenues and debts of the said turnpike road and of the state and condition of the repair of the said turnpike road and highway respectively; and it appearing to us, upon full consideration had thereupon, that part of the statute duty hitherto employed by the said* [*parish, &c.*] *for the repair of the said turnpike road may be conveniently dispensed, without endangering the securities for the money advanced upon the credit of the tolls thereof, and that such statute duty is wanted for the repairs of the other highways within the said parish; we, in pursuance of the power given to us by the act passed in the third year of the reign of King* George *the fourth,* for regulating turnpike roads, *do order that from and after the* ——— *day of* ——— *next, there shall be only* [*one*] *day's statute duty performed by the inhabitants of the said* [*parish, &c.*] *upon the said turnpike road within the same, and that the remainder of the statute duty shall be performed upon the other highways within the said* [*parish, &c.*] 3 G.4. c. 126.

[If there are more turnpike roads than one, or the whole statute duty shall be thought fit to be taken away, this form must be varied to fit those cases; the summons to the surveyors will be very easily formed from this order.]

No. 13. — Certificate of the above Order to the Justices of the Peace at their Quarter Sessions. *Vide ante,* p. 969. No. 13.

I A. B., *clerk to the trustees mentioned in the above order, do hereby certify to the justices of the peace for the* [*county*] [*riding*] [*division*] *of* ———, *at their general quarter sessions of the peace, that the above is a true copy of the order made by the said trustees for the purposes therein mentioned. Dated this* ——— *day of* ———.

A. B.

No. 14. — Agreement by Subscription for advancing Money to make and repair a Turnpike Road or Highway. *Vide ante,* p. 917. No. 14.

WE whose names are subscribed do agree to advance and pay the several sums written by us opposite to our names, unto ———, *to be laid out and expended in the making and repairing a certain highway leading from* ——— *to* ———, *after an act of parliament shall be obtained for making the same turnpike road, upon having the tolls to be collected upon such turnpike road assigned and made over to us as a security for the respective sums so to be advanced by us, together with interest for the same after the rate of* ——— *per centum per annum, which sums we do hereby severally agree to pay, by instalments, in the following manner,* viz. *one fourth part thereof on the* ——— *day of* ——— *next; one other fourth part* [&c. &c. &c.]. *Dated this* ——— *day of* ———.



No. 17. — Summons for any Person or Persons to attend a Justice or Justices. *Vide ante*, p. 909. 986. 3 G. 4. c. 126. No. 17.

County of ——— } To *A. B.* of ———.
to wit. }

WHEREAS complaint and information hath been made before me, C. D., *one of his majesty's justices of the peace for the said* [*county, &c.*] *by* E. F. *of* ———, *that, &c.* [here state the nature and circumstances of the case, as far as it shall be necessary to show the offence, and to bring it within the authority of the justice, and in doing that, follow the words of the act, as near as may be]: *These are therefore to require you personally to appear before me* [or, *the justices to be assembled at their special sessions to be holden*] *at* ———, *in the said* [*county, &c.*] *on the* ——— *day of* ——— *next, at the hour of* ———, *in the* ——— *noon, to answer to the said complaint and information made by the said* E. F., *who is likewise directed to be then and there present, to make good the same. Herein fail not. Given under my hand, this* ——— *day of* ———.

No. 18. — Information. *Vide ante*, p. 909. 986. No. 18.

County of ——— } *BE it remembered, that on the* ——— *day of*
to wit. } ———, A. B. *of* ———, *in the said county, informeth me* ———, *one of his majesty's justices of the peace for the said county, that* ——— *of* ———, *in the said county,* [here describe the offence, with the time and place, and follow the words of the act, as near as may be,] *contrary to the statute made in the third year of the reign of King* George *the fourth*, for regulating turnpike roads, *which hath imposed a forfeiture of* ——— *for the said offence. Taken the* ——— *day of* ———, *before me,*

A. B.

No. 19. — Form of Conviction. *Vide ante*, p. 986. No. 19.

County of ——— } *BE it remembered, that on the* ——— *day of*
to wit. } ———, *in the* ——— *year of the reign of* ———, *and in the year of our Lord* ———, A. B. *is convicted before me* ———, *one of his majesty's justices of the peace for the said county, for* [here specify the offence, and when and where committed (*a*)], *contrary to the form of the statute made in the* ——— *year of the reign of* ———, *intituled* [here set forth the title of the act (*b*)]; *and I do hereby declare and adjudge that the said* A. B. *hath forfeited, for the said offence, the sum of* ——— [or, *shall be committed to* ——— *for the space of* ———, as the case may be]. *Given under my hand and seal, the day and year first above written.*

C. D.

(*a*) In specifying the offence, it is necessary to state the place and the county in which it was committed, in order to give the magistrate jurisdiction, by showing it within the county for which he acts. *Rex* v. *Haxell*, 13 *East*, 139. *Kite & Lane's case*, ante.

(*b*) This must be correctly set forth. *Mills* v. *Wilkins*, 2 *Salk.* 609.



No. 22.—Commitment for Want of Distress. *Vide ante*, p. 986. 3 G.4. c.126. No. 22.

County of ——— to wit. } To the constable of ———, in the said county, and to the keeper of the common gaol [*or*, the house of correction] at ———, in the said county.

WHEREAS A. B. *of* ———, *in the said county, was on the* ——— *day of* ——— *convicted before me*, C. D. *esquire, one of his majesty's justices of the peace in and for the said county, upon the oath of* E. F., *a credible witness, for that he the said* A. B. [here set forth the offence], *contrary to the statute made in the third year of the reign of his majesty King* George *the fourth*, for regulating turnpike roads, *by reason whereof the said* A. B. *hath forfeited the sum of* ———: *And whereas on the* ——— *day of* ———, *in the year aforesaid, I did issue my warrant to the* [*constable*] *of* ———, *to levy the said sum of* ———, *by distress and sale of the goods and chattels of him the said* A. B. *and to distribute the same according to the directions of the said statute; and whereas it duly appears to me, upon the oath of the said* [*constable*], *that the said* [*constable*] *hath used his best endeavours to levy the said sum on the goods and chattels of the said* A. B. *as aforesaid, but that no sufficient distress can be had whereon to levy the same: These are therefore to command you, the said* [*constable*] *of* ——— *aforesaid, to apprehend the said* A. B., *and him safely to convey to the common gaol* [or *house of correction*] *at* ———, *in the said county, and there deliver him to the keeper thereof, together with this precept; and I do also command you the said keeper to receive and keep in your custody the said* A. B. *for the space of three months, unless the said sum shall be sooner paid, pursuant to the said conviction and warrant, and for so doing this shall be your sufficient warrant. Given under my hand and seal, the* ——— *day of* ———, *in the year of our Lord* ———.

C. D.

No. 23.—Notice of Appeal to the Quarter Sessions. *Vide ante*, p. 989. No. 23.

A. B. *take notice that I intend to appeal to the next general quarter sessions of the peace to be holden for the* [*county, &c.*] *of* ———, *against an order* [*conviction or other proceeding,*] (as the case may be) [particularly specifying the purport of such order, &c. and assigning the grievance and cause of complaint]. *Dated the* ——— *day of* ———.

C. D.

SCHEDULE (No. 2.) Stat. 4 G. 4. c. 95. *Vide ante*, p. 966.

No. 25.—A List, containing the Names of all Persons in the Parish or Place of ——————, in the ——————, who are liable to do Statute Work, and to the Payment of Composition in lieu thereof, for the Year commencing from

(Signed)

Surveyors of the said Parish or Place.

1.	2.	3.	4.	5.	6.	7.
Names of Persons liable.	No. of Horses kept.	Full Annual Value.	Rate of Composition.	Total Amount liable in Money.	No. of Days' Duty Work.	General Observations.
		£. s. d.				

Highwaymen. See Robbery, vol. v.

Homicide.

HOMICIDE, in law, signifies the killing of a man by a man. 1 *Haw. c.* 26. § 2.

And it includes in it not only petit treason, concerning which title see Treason, but also the several offences which are treated of in the following sections.

There is also another kind of untimely death of a man, not properly homicide: when he is killed by a horse, a cart, a tree, or the like, and not by a man, which is called casual death; for which see tit. Deodand, Vol. I.

I. *Justifiable homicide.*
[9 G. 4. c. 31.]

II. *Homicide by misadventure.*
[7 G. 4. c. 61. — 9 G. 4. c. 31.]

III. *Homicide by self-defence.*
[7 G. 4. c. 61. — 9 G. 4. c. 31.]

IV. *Manslaughter.*
[7 G. 4. c. 61. — 9 G. 4. c. 31.]

V. *Murder, and attempts to murder, &c.*
[2 & 3 Ed. 6. c. 24. — 22 G. 2. c. 33. art. 28. — 7 G. 4. c. 64. — 9 G. 4. c. 31.]

VI. *Self murder.*
[4 G. 4. c. 52.]

I. Justifiable Homicide.

On a real necessity.

To make homicide justifiable, it must be owing to some unavoidable necessity, to which the person who kills another must be reduced, without any manner of fault in himself. 1 *Haw. c.* 28. § 1.

And there must be no malice coloured under pretence of necessity; for wherever a person who kills another acts in truth upon malice, and takes occasion from the appearance of necessity to execute his own private revenge, he is guilty of murder. 1 *Haw. c.* 28. § 2.

Rioters.

If rioters, or forcible enterers or detainers, stand in opposition to the justices' lawful warrant, and any of them be slain; it is no felony. *Hale's Sum.* 37.

So if they stand in opposition to the sheriff's *posse comitatus*. *Vide* stats. 13 *H.* 4. *c.* 7. 2 *H.* 5. *c.* 8. 1 *Hale*, 53.

And if the sheriff or magistrate, or any one coming in aid of them, be killed, it is murder in all. *Cromp.* 22. 1 *MS. Sum.* 219.

House burners.

If a man come to burn my house, and I shoot out of my house, or issue out of my house, and kill him; it is no felony. *Hale's Sum.* 39.

Ravishers.

A. makes an assault upon *B.*, a woman or maid, with intent to ravish her, she kills him in the attempt, it is *se defendendo*; be-

cause he intended to commit a felony. 1 *Hale*, 485. *Hale's Sum.* 39.

Felons refusing to be arrested.

If a person having actually committed a felony will not suffer himself to be arrested, but stand on his own defence, or fly, so that he cannot possibly be apprehended alive by those who pursue him, whether private persons or public officers with or without a warrant from a magistrate, he may be lawfully slain by them. 1 *Haw. c.* 28. § 11.

Suspected felon refusing to be arrested.

So if a felony hath actually been committed, and an officer or minister of justice having lawful warrant so to do, arrest an innocent person, and such person assault the officer or minister of justice, the officer is not bound by law to give back, but to carry him away; and if in execution of his office, he cannot otherwise avoid it, but in striving kill him; it is no felony. And in that case, the officer or minister of justice shall forfeit nothing; but the party who so assaulted or offered to fly away, and is killed, shall forfeit his goods. 3 *Inst.* 56.

Felon escaping.

Also if a person arrested for felony break away from his conductors to gaol, they may kill him, if they cannot otherwise take him. But in this case, likewise, there must have been a felony actually committed. *Hale's Sum.* 36, 37.

Felon breaking gaol.

Also if a criminal endeavouring to break the gaol assault his gaoler, he may be lawfully killed by him in the fray. 1 *Haw. c.* 28. § 13.

Resisting a civil process.

In civil causes, although the sheriff cannot kill a man who flies from the execution of a civil process, yet if he resist the arrest, the sheriff or his officer need not give back, but may kill the assailant. *Hale's Sum.* 37.

So if in the arrest and striving together the officer kill him, it is no felony. *Hale's Sum.* 37.

Notice on process.

The party must have some notification of the officer's business, or the killing of him will not be murder. (1 *East's P. C.* 319., and the authorities there cited.) If he be a known sworn officer, the law in the instances above mentioned will imply notice: if he be a special bailiff named in the process, he must declare his business and authority, as by using words of arrest or the like: and if such declaration be true and the process legal, and afterwards he be killed, it is murder: for after that declaration the party killing acted at his peril. But if the officer declare his business, it is not necessary he should produce the warrant itself where it is not demanded. It is also said, that if a bailiff or constable be sworn and commonly known to be such, and act within his own precinct, he need not show his warrant to the party, though he demand a sight of it, but the officer ought to tell him the substance of it; but that all others, or these, if acting out of their precincts, ought to show it if demanded. If this be understood merely of the warrant constituting him bailiff or constable, it may be true under the circumstances before noticed; but with respect to the writ or process itself against the party, there is no difference between the public or private bailiff; for in either case, if the party submit to the arrest and demand it, he is bound to show at whose suit, for what cause, out of what court the process issues, and when and where returnable. In no case, however, is he required to part with the warrant out of his own possession, for that is his justification. See 8 *T. R.* 188.

Warrant to arrest should be shown, but not parted with.

more than accidental death. But if the correction exceed the bounds of due moderation, either in the measure of it, or in the instrument made use of for that purpose, it will be either murder or manslaughter, according to the circumstances. If done with a cudgel, or other thing not likely to kill, though improper for the purpose of correction, it will be manslaughter; if with a dangerous weapon likely to kill or maim, as a pestle or great staff, it will be murder; due regard being had in both instances to the age and strength of the party. 1 *East's P. C.* 261.

Grey, a blacksmith, struck his servant with a bar of iron, by way of correction for improper behaviour, by which he was killed; held murder. A woman kicked and stamped on the belly of her child, and ruled the same. *Grey's case, Kel.* 64, 65. 1 *East's P. C.* 261.

Yet though the correction exceed the bounds of moderation, the Court will pay a tender regard to the nature of the provocation, where the act is manifestly accompanied with a good intent, and the instrument not such as must in all probability occasion death; though the party were hurried to great excess. As was the case of a father, (*Worcester Sp. Ass.* 1775,) whose son had frequently been guilty of stealing, complaints of which had come to the father, who had often corrected him. At length the son being charged with another theft, and resolutely denying it, though proved against him, the father in a passion beat his son with a rope by way of chastisement for the offence so much, that he died. The father expressed the utmost horror, and was in the greatest affliction for what he had done, intending only to have punished him with such severity as to have cured him of his wickedness. The learned judge, who tried the father, consulted his colleagues in office and the principal counsel on the circuit, who all concurred in opinion that it was only manslaughter, and so it was ruled. 1 *East's P. C.* 261.

Accidents in common occupations.

Accidents frequently occur amongst persons following their lawful occupations, especially such from whence danger may probably arise. If they saw the danger, and yet persisted without sufficient warning, it will be murder. If the act were such as was likely to breed danger, and they neglected the ordinary cautions, it will be manslaughter at least, on account of such negligence: making due allowance for the nature of the occupation, and the probability of the danger; which, if very remote, and in the particular instance not reasonably to be expected, may reduce the act to misadventure. The criterion in such cases is to examine whether common social duty would, under the circumstances, have suggested a more circumspect conduct.

Workmen throwing rubbish.

For instance, in the case of workmen throwing stones and rubbish from an house in the ordinary course of their business, by which a person underneath happens to be killed; if they deliberately saw the danger, or betrayed any consciousness of it, from whence a general malignity of heart might be inferred, and yet gave no warning, it will be murder, on account of the gross impropriety of the act. If they did not look out, or not till it was too late, and there was even a small probability of persons passing by, it will be manslaughter. But if it had been in a retired place, where there was no probability of persons passing by, and none had been seen about the spot before, it seems to be no more than accidental death. For though the act itself might breed danger,



slaughter; though he had been challenged to fight by his adversary for a public trial of skill in boxing, and was also urged to engage by taunts; and the occasion was sudden, &c. *Ward's case, O. B.* 1789. 1 *East's P. C.* 270. and see 1 *Russ.* 756, 757. *and the authorities there cited.*

The rule before laid down supposeth, that the act from which death ensued was *malum in se.* For if it were barely *malum prohibitum,* as shooting at game by a person not qualified by statute law to keep or use a gun for that purpose, the case of a person so offending will fall under the same rule as that of a qualified man. For the statutes prohibiting the destruction of the game, under certain penalties, will not, in a question of this kind, enhance the accident beyond its intrinsic moment. *Fost.* 259.

Further, if there be an evil intent, though that intent extendeth not to death, it is murder. Thus, if a man, knowing that many people are in the street, throw a stone over a wall, intending only to frighten them, or to give them a little hurt, and thereupon one is killed, this is murder; for he had an ill intent, though that intent extended not to death, and though he knew not the party slain. 3 *Inst.* 57.

A gentleman came to town in a chaise, and before he got out of it fired his pistols in the street, which by accident killed a woman. This was ruled manslaughter: the act was likely to breed danger, and manifestly improper. *Burton's case,* 1 *Str.* 481. 1 *East's P. C.* 266.

The law does not require the utmost caution that can be used; it is sufficient that a reasonable precaution, what is usual and ordinary in the like cases, be taken; such as hath been found by long experience in the course of human affairs to answer the end: for such conduct shows that the party was regardful of social duty, and free from any manner of guilt. *Fost.* 264. 1 *East's P. C.* 266. And, therefore, upon that principle, Mr. Justice *Foster* denies *Rampton's* case, *Kel.* 41. to be law: and, indeed, there is a quære put to it in the margin of the reporter. The prisoner had found a pistol in the street, which he had reason to believe was not loaded, having tried it with the rammer, which had gone down into the muzzle of the pistol; the rammer, in fact, being too short. He carried the pistol home, and his wife standing before him, he cocked it and touched the trigger; on which the pistol went off and killed the woman. This was ruled manslaughter. In truth, the man had used the ordinary precaution, adapted to the probability of danger in such cases: he had examined the pistol by the usual method of trial. And though it was doubtless an idle frolic, yet the heart was free from all sort of guilt, even the guilt of negligence; and therefore the act ought to have been excused. And the same learned judge determined accordingly in a case something similar.

Upon a *Sunday* morning a man and his wife going to dine at a friend's house in the neighbourhood, he carried his gun with him, to divert himself on his way; but before dinner he discharged it, and set it up in a private place in his friend's house. After dinner he went to church, and in the evening returned home with his wife and neighbours, bringing his gun with him; which was put into the room where his wife was, she having brought it part of the way. He taking it up touched the trigger, and the gun



And an officer who kills one that resists him in the execution of his office, and even a private person that kills one who feloniously assaults him in the highway, may justify the fact without ever giving back at all. 1 *Haw. c.* 29. § 16.

But if a person upon malice *prepense* strike another, and then fly to the wall, and there in his own defence kill the other, this is murder. *Hale's Sum.* 42.

Hereof there can be no accessaries either before or after the fact, because it is not done with a felonious intent, but upon inevitable necessity. 3 *Inst.* 56. Accessaries.

If a man escape, that hath killed another in his own defence, the town shall be amerced. 2 *Inst.* 315. Escape.

Lord *Coke*, (2 *Inst.* 316.) says, that the justices of the peace cannot take an indictment of killing a man *se defendendo;* because their commission is not general, as is that of the justices of gaol delivery, but limited. But Ld. *Hale* (2 *Hale*, 46.) holds the contrary. Power of justices of the peace.

As to the power of justices of the peace to hold to bail, see the stat. 7 *G.* 4. *c.* 61. § 1. *ante*, Vol. I. tit. Bail. 7 G. 4. c. 61. Bail.

And by stat. 9 *G.* 4. *c.* 31. § 10. No punishment or forfeiture shall be incurred by any person who shall kill another by misfortune, or in his own defence, or in any other manner without felony. 9 G. 4. c. 31. No punishment or forfeiture.

Note.— Before this stat. the practice was to direct the jury to acquit the prisoner; without obliging him, by a special finding, to purchase his pardon under the statute of *Gloucester*, *c.* 9. And thus no forfeiture was incurred.

For the ancient law, by which a pardon was rendered necessary, see 3 *Inst.* 56. 1 *Hawk. c.* 29. § 25.

IV. Manslaughter.

Manslaughter is thus defined, the unlawful killing of another without malice either express or implied; which may be either voluntarily, upon a sudden heat; or involuntarily, but in the commission of some unlawful act. 4 *Blac. Com.* 191. 1 *Hale*, 466. 1 *Haw. c.* 30. § 1. 1 *East's P. C.* 218. Manslaughter, what.

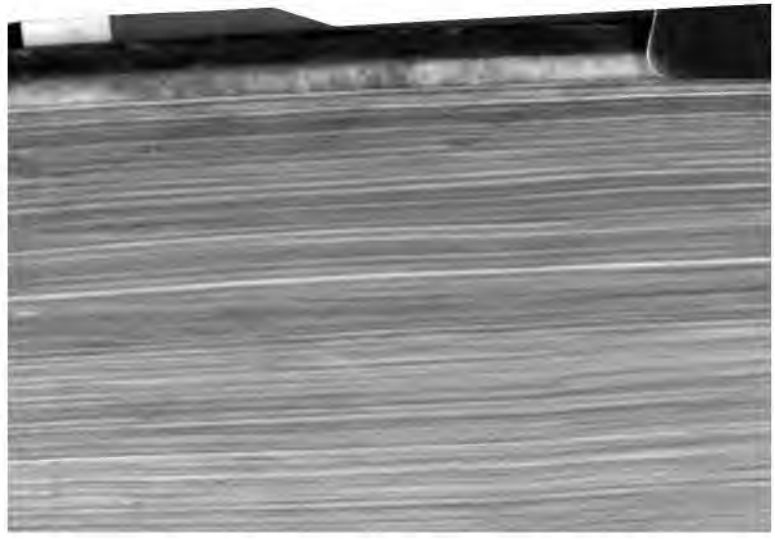
There is no difference between murder and manslaughter, but that murder is upon malice forethought, and manslaughter upon a sudden occasion. As if two meet together, and striving for the wall, the one kill the other, this is manslaughter and felony. And so it is, if they had upon that sudden occasion gone into the field and fought, and the one had killed the other, this had been but manslaughter, and no murder; because all that followed was but a continuance of the first sudden occasion, and the blood was never cooled till the blow was given. 3 *Inst.* 55. Without malice.

There can be no accessaries to this offence before the fact, because it must be done without premeditation. 1 *Haw. c.* 30. § 2. 1 *East's P. C.* 218. Accessaries.

But there may be accessaries after the fact. 3 *Inst.* 55.

It is within the benefit of clergy; but the offender shall forfeit as in other felonies. 2 *Hale*, 344. Clergy.

As to the power of justices of the peace to hold offenders to bail, see stat. 7 *G.* 4. *c.* 61. § 1. and *ante*, Vol. I. tit. Bail. 7 G. 4. c. 61. Bail.



hending such person, and bringing him before them; or the justice before whom the charge shall be made may (if he shall so think fit) issue such warrant in the first instance, without any previous summons. 9 G. 4. c. 31.

§ 34. Provided, that the prosecution for every offence punishable on summary conviction by virtue of this act shall be commenced within three calendar months after the commission of the offence, and not otherwise. Time for summary proceedings.

§ 35. The justices before whom any person shall be summarily convicted of any offence against this act, may cause the conviction to be drawn up in the following form of words, or in any other form of words to the same effect, as the case shall require; (that is to say,) Form of conviction.

BE it remembered, that on the ——— day of ———, in the year of our Lord ———, at ——— in the county of ———, [or, *riding, division, liberty, city,* &c. as the case may be,] A. O. *is convicted before us* [naming the justices], *two of his majesty's justices of the peace for the said county,* [or, *riding,* &c.], *for that he the said* A. O. *did* [specify the offence, and the time and place when and where the same was committed, as the case may be]; *and we the said justices adjudge the said* A. O. *for his said offence to be imprisoned in the ———, and there kept to hard labour for the space of ———,* [or, *we adjudge the said* A. O. *for his said offence to forfeit and pay the sum of*] [here state the amount of the fine imposed], *and also to pay the sum of ——— for costs; and in default of immediate payment of the said sums, to be imprisoned in the ——— for the space of ———, unless the said sums shall be sooner paid;* [or, *and we order that the said sums shall be paid by the said* A. O. *on or before the ——— day of ———*], *and we direct that the said sum of ———,* [*i. e.* the amount of the fine] *shall be paid to —— of ——— aforesaid, in which the said offence was committed, to be by him applied according to the directions of the statute in that case made and provided; and we order that the said sum of ——— for costs shall be paid to* C. D. [the party aggrieved.] *Given under our hands the day and year first above mentioned.*

§ 36. No such conviction shall be quashed for want of form, or be removed by *certiorari* or otherwise into any of H. M.'s superior courts of record; and no warrant of commitment shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted, and there be a good and valid conviction to sustain the same. No certiorari, &c.

§ 37. Provided that nothing in this act contained shall affect or alter any act, so far as it relates to the crime of high treason, or to any branch of the public revenue, or shall affect or alter any act for the prevention of smuggling, or any part of the act passed in the sixth year of the present reign, intituled *An act to repeal the laws relating to the combination of workmen, and to make other provisions in lieu thereof.* Not to repeal any act relating to high treason, the revenue, or combinations.

§ 38. This act not to extend to *Scotland* or *Ireland.*

V. Murder.

By stat. 9 *G.* 4. *c.* 31. § 2. Every offence which before this act would have amounted to petit treason, shall be deemed to be 9 G. 4. c. 31. Petit treason.



usage, cause the death of his apprentice, it will be murder. 1 *Russ.* 620.

Thus, where the prisoner, upon his apprentice returning to him from *Bridewell*, whether he had been sent for misbehaviour, in a lousy and distempered condition, did not take that care of him which his situation required, and which he might have done; not having suffered him to be in a bed on account of the vermin, but having made him lie on the boards for some time without covering, and without common medical care; and the death of the apprentice, in the opinion of the medical persons who were examined, was most probably occasioned by his ill-treatment in *Bridewell*, and the want of care when he went home, and the medical persons inclined to think that, if he had been properly treated when he came home, he might have recovered; the Court, under these circumstances, and others in favour of the prisoner, left it to the jury to consider, whether the death of the apprentice was occasioned by the ill-treatment he received from his master after returning from *Bridewell*, and whether that ill-treatment amounted to evidence of malice; in which case they were to find him guilty of murder. The prisoner was found guilty of manslaughter.

And in a more modern case, a prisoner was found guilty of murder in causing the death of his apprentice, by not providing him with sufficient food and nourishment. *Self's case, O. B. Feb.* 1776. 1 *East's P. C.* 226. 1 *Leach*, 137.

Rex v. Squire and Wife.

R. v. *Squire and his wife, Stafford Lent Assizes*, 1799. *Cor. Lawrence* J. *MS.* The prisoner, *Charles Squire*, and *Hannah*, his wife, were indicted at *Stafford Lent Assizes*, 1799, for the murder of *Joseph Green*, a parish apprentice, bound to the prisoner *Charles*. It was proved that both the prisoners had treated the apprentice in a most cruel and barbarous manner for a considerable length of time, by tying a cord round his middle when naked, and taking him to a brook, and drawing him by the rope up and down the brook over head; by beating him naked with a twisted cord; by throwing flashes and sparks of fire from red hot iron rods upon him when only in his shirt; by beating him with a red hot iron rod and burning him; by repeated beatings with files, hammers, and sharp instruments, and with rods and fist, so that he was seldom without burns, cuts, wounds, and black eyes; by suspending him naked by a cord round his middle to a beam on the top of the shop with one leg tied to the other thigh, and the great toe of the other just touching the ground, and his hands buckled behind; by suspending him by the heels by a cord tied round his ancles up to the beam, and hanging with his head towards the ground, but not touching it, and his hands tied behind him, so that he was black in the face, and blood gushed out at his mouth, and leaving him in the shop in that situation and locking the door, so that he was speechless, and must inevitably have died, if a boy who passed by had not got the key, and gone into the shop and cut him down; by tying him and placing him on his naked back upon the floor in a small room all night, and other acts of inhuman barbarity; and, lastly, by not giving him sufficient food and nourishment. The surgeon, who had examined the boy, and had seen him before, deposed, that in his judgment the boy died from debility, and for want of proper food and nourishment, and not from the wounds, &c. which he



cannot come under the judgment of felony, because no external act of violence was offered whereof the law can take notice. 1 *Hale*, 429. 1 *East's P. C.* 225.

Duelling after a sudden quarrel.

If two fall out upon a sudden occasion, and agree to fight in such a field, and each of them go and fetch their weapon and go into the field, and therein fight, and the one killeth the other, this is no malice prepense; for the fetching of the weapon and going into the field is but a continuance of the sudden falling out, and the blood was never cooled. But if there were deliberation, as that they met the next day, nay, though it were the same day, if there were such a competent distance of time that in common presumption they had time of deliberation, then it is murder. 3 *Inst.* 51. 1 *Hale*, 453.

Duelling in cold blood.

And the law so far abhors all duelling in cold blood, that not only the principal who actually kills the other, but also his seconds, are guilty of murder, whether they fought or not. And it is holden that the seconds of the party slain are likewise guilty as accessaries. 1 *Haw. c.* 31. § 31. 1 *East's P. C.* 242.

Physician giving a potion which causes death.

If a physician or surgeon give a person a potion, without any intent of doing him any bodily harm, but with intent to cure or prevent a disease, and, contrary to the physician's or surgeon's expectation, it kills him, this is not homicide. And Ld. *Hale* says, he holds their opinion to be erroneous, who think that if he be no licensed surgeon or physician that occasioneth this mischance, that then it is felony. These opinions (he says) may caution ignorant people not to be too busy in this kind of tampering with physic, but are no safe rule for a judge or jury to go by. 1 *Hale*, 429.

Giving a potion to cause abortion.

But if a woman be with child, and any give her a potion to destroy the child within her, and she take it, and it works so strongly that it kills her, this is murder; for it was not given her to cure her of a disease, but unlawfully to destroy the child within her; and, therefore, he that gives her a potion to this end, must take the hazard, and if it kills the mother, it is murder. 1 *Hale*, 430.

Also if a woman be quick with child, and by a potion or otherwise killeth it in her womb; or if a man beat her, whereby the child dieth in her body, and she is delivered of a dead child, this is great misprision, but no murder; but if the child be born alive, and dieth of the potion, battery, or other cause, this is murder. 3 *Inst.* 50.

Ld. *Hale* says, that in this case it cannot legally be known whether the child were killed or not; and that if the child die, after it is born and baptized, of the stroke given to the mother, yet it is not homicide. (1 *Hale*, 443.) And Mr. *Dalton* says, whether it die within her body or shortly after her delivery, it maketh no difference. (*Dalt. c.* 145. p. 332.) But Mr. *Hawkins* says, that (in this latter case) it seems clearly to be murder, notwithstanding some opinions to the contrary. 1 *Haw. c.* 31. § 16.

Counselling woman to kill her child.

It seems agreed that where one counsels a woman to kill her child when it shall be born, who afterwards doth kill it in pursuance of such advice, he is an accessary to the murder. 1 *Haw. c.* 31. § 17.

He who kills another upon his desire or command is, in the judgment of the law, as much a murderer as if he had done it



determined, and punished, in any of the said counties, in the same manner as if it had been actually and wholly committed therein. 7 G.4. c.64.

begun in one county and completed in another.

By stat. 9 *G.* 4. *c.* 31. § 11. If any person unlawfully and maliciously shall administer or attempt to administer to any person, or shall cause to be taken by any person, any poison or other destructive thing, or shall unlawfully and maliciously attempt to drown, suffocate, or strangle any person, or shall unlawfully and maliciously shoot at any person, or shall, by drawing a trigger, or in any other manner, attempt to discharge any kind of loaded arms at any person, or shall unlawfully and maliciously stab, cut, or wound any person, with intent, in any of the cases aforesaid, to murder such person, every such offender, and every person counselling, aiding, or abetting such offender, shall be guilty of felony, and being convicted thereof, shall suffer death as a felon.

9 G.4. c.31. Attempts to murder, when evidenced by certain acts, shall be capital.

§ 12. If any person unlawfully and maliciously shall shoot at any person, or shall, by drawing a trigger, or in any other manner, attempt to discharge any kind of loaded arms at any person, or shall unlawfully and maliciously stab, cut, or wound any person, with intent, in any of the cases aforesaid, to maim, disfigure, or disable such person, or to do some other grievous bodily harm to such person, or with intent to resist or prevent the lawful apprehension or detainer of the party so offending, or of any of his accomplices, for any offence for which he or they may respectively be liable by law to be apprehended or detained, every such offender, and every person counselling, aiding, or abetting such offender, shall be guilty of felony, and being convicted thereof shall suffer death as a felon: Provided, that in case it shall appear on the trial of any person indicted for any of the offences above specified, that such acts of shooting or of attempting to discharge loaded arms, or of stabbing, cutting, or wounding as aforesaid, were committed under such circumstances that if death had ensued therefrom the same would not in law have amounted to the crime of murder: in every such case the person so indicted shall be acquitted of felony.

Shooting at, or stabbing, cutting, or wounding any person, with intent to maim, &c. shall be capital, provided the case would have been murder if death had ensued.

§ 13. If any person, with intent to procure the miscarriage of any woman then being quick with child, unlawfully and maliciously shall administer to her, or cause to be taken by her, any poison or other noxious thing, or shall use any instrument or other means whatever with the like intent, every such offender, and every person counselling, aiding, or abetting such offender, shall be guilty of felony, and being convicted thereof shall suffer death as a felon: And if any person, with intent to procure the miscarriage of any woman not being, or not being proved to be then quick with child, unlawfully and maliciously shall administer to her, or cause to be taken by her, any medicine, or other thing, or shall use any instrument or other means whatever with the like intent, every such offender, and every person counselling, aiding, or abetting such offender, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be transported beyond the seas for any term not exceeding fourteen years nor less than seven years, or to be imprisoned, with or without hard labour, in the common gaol or house of correction, for any term not exceeding three years, and if a male, to be once, twice, or thrice publicly or privately whipped (if the Court shall so think fit), in addition to such imprisonment.

Attempts to procure miscarriage.



VI. Self-murder.

A *felo de se*, or felon of himself, is a person who, being of sound mind, and of the age of discretion, voluntarily killeth himself. 3 *Inst.* 54. 1 *Hale*, 411. Felo de se.

If a man give himself a wound, intending to be *felo de se*, and dieth not within a year and day after the wound, he is not *felo de se*. 3 *Inst.* 54. Year and day.

Mr. *Hawkins* speaks with some warmth against an unaccountable notion (as he calls it), which hath prevailed of late, that every one who kills himself must be *non compos* of course; because it is said to be impossible that a man in his senses should do a thing so contrary to nature and all sense and reason. But he argues, that if this doctrine were allowable, it might be applied in excuse of many other crimes as well as this; as, for instance, that of a mother murdering her child, which is also against nature and reason; and this consideration, instead of being the highest aggravation of a crime, would make it no crime at all; for it is certain a person *non compos mentis* can be guilty of no crime, 1 *Haw. c.* 27. § 3. Non compos.

And Lord *Hale* says, it is not every melancholy or hypochondriacal distemper that denominates a man *non compos*, for there are few who commit this offence but are under such infirmities; but it must be such an alienation of mind, as renders a person to be a madman, or frantic, or destitute of the use of reason, which will denominate him *non compos*. 1 *Hale*, 412.

The offender herein doth incur a forfeiture of goods and chattels, but not of lands; for no man can forfeit his land without an attainder by course of law. 3 *Inst.* 54. Forfeiture.

Nor shall his goods be forfeited, until it be lawfully found by the oath of twelve men; and this belongs to the coroner to inquire of, upon view of the body. And if the body cannot be viewed, the justices in sessions may enquire thereof; for they have power by their commission to enquire of all felonies; and a presentment thereof found before them entitles the king to the forfeiture. 3 *Inst.* 54, 55. *Dalt. c.* 144.

But, nevertheless, the forfeiture shall relate to the time of the wound given, and not to the time of the death, or of the inquisition. 3 *Inst.* 55. *Dalt. c.* 144. 1 *Hale's Sum.* 29. 1 *Haw. c.* 27. § 10.

But Ld. *Hale*, in his History of the Pleas of the Crown, seemeth to doubt whether it shall not relate to the time of the death only, and not the time of the wound given. 1 *Hale*, 414.

Nor doth the offence work any corruption of blood or loss of dower. 1 *Haw. c.* 27. § 8. Corruption of blood.

By the rubrick in the book of common prayer, before the burial office, (confirmed by act of parliament, 13 & 14 *C.* 2. *c.* 4.) a person who hath laid violent hands upon himself shall not have that office used at his interment. Burial.

He shall be buried ignominiously in the highway, with a stake driven through his body. 4 *Blac. Com.* 190.

But by stat. 4 *G.* 4. *c.* 52. After reciting that whereas it is expedient that the laws and usages relating to the interment of the remains of persons, against whom a finding of *felo de se* shall be 4 G. 4. c. 52. Remains of persons against whom a finding



animal, turned upon a common, and as the witnesses said, fit only for a dog-horse. *Mr. Justice Foster* recommended it to the jury to find the prisoner guilty to the value of 12*d.*; which they did; and he was transported. *Pearles's case, Bedford, 13th March* 1755, 2 *East's P.C.* 741.

Mr. *Dickenson* mentions the following extraordinary attempt to convert an open and *forcible* taking of a horse, into a *felonious* taking, in a case which occurred at the *Essex Summer Assizes*, 1817. *Israel Alexander* and *Thomas Davis* were tried before Lord *Ellenborough* C. J. for horse-stealing. The facts were these: — One *Carter*, a servant to the proprietors of the *Cannon Brewery*, rode on a horse borrowed by his employers as far as *Stratford*, in the road to *Woodford*, on business of the said proprietors. When he arrived opposite the *King's Head Inn*, at *Stratford*, the horse turned restive, and would go no further. *Carter* got off to lead him into the inn-yard, intending to pursue the short remainder of his journey on foot, when the two prisoners opened the sash of a window in the inn, and called out, *What will you take for the restive horse?* *Carter* answered, *He is not worth more than 5l.* This, on the trial of the prisoners, he declared he only said in a passion, meaning to apply it to the restiveness of the animal; for he added "that the horse was a borrowed one, and not his to dispose of," and that in fact it was worth at least 20*l.* He led it into the stable, and went himself into the house.—*Alexander* went into the yard, soon after returned, said he would have the horse, and tendered a note of 20*l.* or 25*l.* value to *Carter*, and asked him to return the difference: *Carter* in reply repeated, *that it was a borrowed horse, and that he had no authority to sell it, and what he had said about the value of him was merely a joke.* *Alexander* repeatedly tendered the money, and afterwards took the horse away with him by force, went to another inn, and locked him up in the stable there. This all passed at mid-day in the open yard of the inn, in the presence of several persons. *Carter* pursued his journey on foot, and on his return demanded his horse, but could not obtain him. The jury were disposed to find the prisoners guilty of a fraud; but Ld. *Ellenborough* C. J. said, "The prisoners are indicted for horse-stealing, and they must either be found guilty of that specific offence, or wholly acquitted. Under the circumstances of the case, there is no pretence to say that this public and open taking of the horse was a stealing, which supposes something of privacy and secrecy. It is very material to justice not to confound cause of action with felony; claim of civil redress with public crime. Even if they had been indicted for a fraud, I do not think the circumstances of the case would have supported the indictment: but there is no pretence to say that this wanton, and even forcible taking of the horse, can come under the denomination of horse-stealing."

Dickenson's Justice, vol. 2. p. 138.

II. Buying Stolen Horses.

By stats. 2 & 3 *P. & M. c.* 7. and 31 *El. c.* 12. it is enacted as follows:

2 & 3 P. & M. c. 7.

31 El. c. 12.

The keeper of every fair and market shall yearly appoint a certain special and open place, where horses shall be sold in any fair or market overt;

Horse fair.



IV. Regulations for slaughtering Horses.

By stat. 26 *G.* 3. *c.* 71. § 1. Every person who shall keep or use any house or place for the purpose of slaughtering any horse, mare, gelding, colt, filly, ass, mule, bull, ox, cow, heifer, calf, sheep, hog, goat, or other cattle, *which shall not be killed for butchers' meat*, shall take out a licence at the quarter sessions, which shall be signed by the justices at such sessions, upon a certificate under the hands and seals of the minister and churchwardens or overseers, or of such minister and two substantial householders of the parish wherein such person shall dwell, that he is fit and proper to be trusted with the carrying on such business: and if such licensed person shall die, his widow or personal representative may carry on the said business until the next sessions.

26 G. 3. c. 71. Licence to be taken at the sessions.

§ 2. The licence shall be signed by the major part of the justices, and a copy of the licence shall be entered in a book to be kept by the clerk of the peace for that purpose; which book any person may inspect, and make extracts therefrom, between the hours of ten and twelve in the forenoon (*Sundays* excepted), paying for the same 6*d*.

Book to be kept.

Every person so licensed shall cause his *name* and the words *Licensed for slaughtering horses pursuant to an act passed in the 26th year of his majesty King* George *the third*, to be painted or fixed over the door or gate of the house or place where he shall carry on the said business, in large and legible characters.

Certain words to be put up.

§ 5. And such parishioners as by law are entitled to meet in vestry to choose parish officers shall annually or oftener appoint one or more persons to inspect every such slaughtering-house; and the inspector shall cause his *name*, and the words *Inspector of houses and places for slaughtering horses*, to be put up over his door where he resides.

Inspectors to be appointed, and their names put up.

§ 3. 5. Every such licensed person shall give six hour's notice in writing to such inspector, previous to his killing any such horse, &c. or other cattle, and previous to the flaying any such brought dead to such slaughtering-house, to the intent that the inspector may attend and take an account and description of the height, age, colour, and marks of every such horse, mare, gelding, foal or filly, ass or mule, and the colour and marks of every cow, &c. brought alive to be killed, or brought dead as aforesaid; and the same shall not be killed or flayed but between the hours of eight in the morning and four in the evening, between the last day of *September* and the first day of *April*, and six in the morning and eight in the evening between the last day of *March* and the first day of *October*, yearly. The inspector shall keep a book, and enter such description therein, and every person carrying on such business shall pay 6*d*. for every entry; and all persons may have access to such book between the hours of eight in the morning and five in the evening from the 1st day of *October* to the last day of *March*, and between six in the morning and eight in the evening during the other six months, paying 6*d*. for every inspection. If the inspector shall

Inspector's duty.



where such offender shall reside; and in case he shall not have effects to the amount of the penalty, such justice shall, after sale and application as aforesaid of such effects as shall be found, commit him to the house of correction, there to be confined to hard labour for any time not exceeding three months, nor less than one month. 26 G. 3, c. 71.

Every person keeping or using any slaughter-house, who shall kill or flay any horse, &c. for any other purpose than for butchers' meat, or shall flay any horse, &c. brought dead, without taking out such licence as aforesaid, or without giving notice, or shall kill or flay at any time other than within the hours, or shall not delay killing according to the directions of the inspector as before directed, shall be guilty of felony, and shall be punished by fine and imprisonment, and such corporal punishment by public or private whipping, or shall be transported for seven years, as the court convicting shall direct. Slaughtering horses, &c. without a licence, &c. felony.

§ 13. If any unlicensed person shall occasionally lend any house, barn, stable, or other place for the purpose of slaughtering any horse, &c. which shall not be slaughtered for butchers' meat, and shall be thereof convicted (E) before one justice where such person shall reside, upon the oaths of two witnesses, he shall forfeit for every offence any sum not exceeding 20*l.* nor less than 10*l.*, half to the informer, and half to the poor of the parish where the offence shall be committed; and if such penalty be not forthwith paid, such justice shall commit the offender to the common gaol or house of correction, without bail, for any time not exceeding three calendar months, nor less than one calendar month, unless the penalty shall be sooner paid. Lending slaughter-houses.

§ 9. And if any licensed person shall throw into any lime-pit, or immerse in lime, or any preparation thereof, or rub therewith, or with any other corrosive matter, or destroy or bury the hide or skin of any horse, &c. by him slaughtered or flayed; or shall be guilty of any offence against this act for which no penalty or punishment is provided; such person, being convicted thereof, shall be deemed guilty of a *misdemeanor*, and shall be punished by fine and imprisonment, and such corporal punishment by public or private whipping, as the court convicting shall think proper. Destroying or burying hides.

§ 14. Provided, that nothing herein shall extend to any currier, felt-maker, tanner, or dealer in hides, who shall kill any aged or distempered horse, &c. or purchase any dead one for the *bonâ fide* purpose of selling, using, or curing the hide thereof in the course of their respective trades; nor to any farrier employed to kill aged and distempered cattle; nor to any person who shall kill any of their own or other cattle, or purchase any that are dead, to feed their own hounds or dogs; or to give away the flesh thereof for the like purpose. Persons excepted.

§ 16. But every collar-maker, currier, felt-maker, tanner, or dealer in hides, farrier, or other person who shall, under colour of their respective trades, knowingly or willingly kill any sound or useful horse, gelding, mare, foal, or filly, or boil or otherwise cure the flesh thereof, for the purpose of selling the same, shall forfeit not exceeding 20*l.* nor less than 10*l.* Persons not excepted.

§ 16. Witnesses wilfully refusing or neglecting to appear, having been duly summoned, or refusing to give evidence, shall forfeit 10*l.*; and in default of payment thereof shall stand committed to the Witnesses.



VI. Putting scabbed Horses on Commons.

By stat. 32 *H.* 8. *c.* 13. § 9. No person shall have, or put to pasture any horse, gelding or mare, infected with scab or mange, in any common, or common fields, on pain of 10*s.* which offence shall be enquirable in the leet, as other common annoyances be, and the forfeitures shall be to the lord of the leet. 32 H. 8. c. 13

A. Warrant to apprehend a Horse-stealer. A.

County of ———, to wit. } To the constable of ———.

FORASMUCH as A. I., *of* ———, *in the county of* ——— *yeoman, hath this day made information and complaint upon oath before me* J. P. *esquire, one of his majesty's justices of the peace for the said county, that in the night of yesterday a black mare, the property of him the said* A. I., *was feloniously stolen, taken, and led away from and out of the grounds of him the said* A. I., *at* ——— *aforesaid, and that he hath just cause to suspect and doth suspect that* A. O., *late of* ———, *labourer, did feloniously steal, take, and lead away the said mare: These are therefore to command you forthwith to apprehend him the said* A. O., *and bring him before me to answer to the said information and complaint, and to be further dealt with according to law. Herein fail you not. Given under my hand and seal, the* ——— *day of* ———, *in the year of our Lord* ———.

Or if the offence amount to burglary, then the warrant may be thus:

B. B.

County of ———, to wit. } To the constable of ———.

FORASMUCH as A. I., *of* ——— *in the county of* ———, *yeoman, hath this day made information and complaint upon oath before me* J. P. *esquire, one of his majesty's justices of the peace for the said county, that in the night of yesterday the stable of him the said* A. I., *adjoining to the dwelling-house of him the said* A. I., *at* ——— *aforesaid, was feloniously and burglariously broke open, and one black mare, the property of him the said* A. I., *feloniously and burglariously stolen, taken, and led away from thence: and that he hath just cause to suspect and doth suspect that* A. O., *late of* ———, *in the county aforesaid, labourer, the said felony and burglary did commit: These are therefore to command you forthwith to apprehend him the said* A. O., *and bring him before me to answer to the said information and complaint, and to be further dealt with according to law. Herein fail you not. Given under my hand and seal the* ——— *day of* ———, *in the year of our Lord* ———.

Forms of Conviction prescribed by Stat. 26 G. 3. c. 71.

C.

C.

A. B. *is convicted on the oath of* A. W., *inspector of houses and places for slaughtering horses for the parish of* ———, *in the county of* ———, *of refusing to pay the sum of* ———, *being the expense of an advertisement, or advertisements* [as the case may be], *inserted in the* Daily Advertiser, *or some other public newspaper circulated in the county* [as the case may be], *pursuant to the directions of the statute in that case made and provided. Given under my hand and seal this* ——— *day of* ———.

F. G.

D.

D.

BE it remembered, that on this ——— *day of* ———, *in the year* ———, A. O., *licensed for slaughtering horses, is convicted upon the oaths of* A. W. *and* B. W., *two credible witnesses, before me* J. P. *one of his majesty's justices of the peace for the county of* ———, *of having wilfully made, or caused to be made* [as the case may be] *a false entry in the book required by the statute in that case made and provided to be kept by the said* A. O., *whereby he* [*she*, or *they*] *has* [or *have*] *forfeited the sum of* ———. *Given under my hand and seal the day and year above written.*

E.

E.

BE it remembered, that on this ——— *day of* ——— A. O. *was convicted upon the oaths of two credible witnesses, before me* J. P., *one of his majesty's justices of the peace for the county of* ———, *for occasionally lending a house* [or *place*, as the case may be] *for the purpose of slaughtering horses* [or, as the case may be, *of slaughtering cattle for other purposes than for butchers' meat*,] *without a licence for that purpose first obtained, according to the statute in that case made and provided. Given under my hand and seal the day and year above written.*

Horse Races.

[13 G. 2. c. 19. § 1, 2. 7. — 18 G. 2. c. 34. § 4, 5, 6. 11.]

13 G. 2. c. 19. No person to enter a horse unless it be his own property.

BY stat. 13 *G.* 2. *c.* 19. § 1. Whereas the great number of horse races for small plates or prizes have contributed very much to the encouragement of idleness, and impoverishment of many of the meaner sort of people, and the breed of strong and useful horses hath been much prejudiced thereby; it is enacted, that no person shall enter, start, or run any horse, mare, or gelding, for any prize, unless the same shall be *bond fide* his own property; on pain of forfeiting the same, or the value thereof.

Not to enter more than one horse for the same prize.

Nor shall any one person enter and start more than one horse, &c. for one and the same prize; on pain that every such horse, &c. (other than that which was first entered) shall be forfeited, or the value thereof.

By § 7. All sums of money paid for entrance shall go to the second best horse. 18 G. 2. c. 19.

Entrance-money.

By § 2. No plate, prize, sum of money, or other thing, shall be run for, or advertised, or proclaimed to be run for by any horse, &c., unless such plate, &c. be of the real and intrinsic value of 50*l.* or upwards; and if any person shall enter, start, or run any horse, &c. for any such plate, &c. under the value of 50*l.* or shall make, print, advertise, or publish any advertisement or notice of any such prize under the value of 50*l.*, every such person so entering, starting, or running such horse, &c. shall forfeit 200*l.* and every maker, printer, or publisher, advertiser, or proclaimer of such advertisement, shall forfeit 100*l.*

No prize to be less than 50*l.*

By stat. 18 *G.* 2. *c.* 34. § 11. Any person may run any match, or start and run for any plate, prize, sum of money, or other thing of the real value of 50*l.* or upwards, at any weights, and place soever, without incurring the penalties of stat. 18 *G.* 2. *c.* 19. (*vix.* § 3. 5.) relating to weights as afore mentioned. 18 G. 2. c. 34. 50*l.* prize may be run for by any weights at any place.

This section virtually repeals 18 *G.* 2. *c.* 19. § 3. as to *weights*, and *id.* § 5. as to places of running being *Newmarket* and *Black Hambleton* only for prizes of 50*l.* value or upwards. See *Tyrw.* & *Tyn. D.* of *S.* p. 370. *pl.* 4.

By § 5. And no person shall start or run any match for any sum of money or other thing, unless it be at *Newmarket* or *Black Hambleton*, or such sum or other thing be of the real and intrinsic value of 50*l.* or upwards; on pain of 200*l.* See the doubts, 2 *B.* & *P.* 53, 54. and *Tyrwhitt's* note, *Stat. Dig.* tit. *Horse Racing*, pl. 5. 4 *Blac. Com.* 173. *n.* 11. *Chr.* No match to be for less than 50*l.*

By § 4. Every race run for any prize, plate, or sum of money, shall be begun and ended in the same day.

In *Johnson* v. *Bann*, 4 *T. R.* 1., it was decided that a wager on the event of a horse race for a smaller sum than 50*l.* is illegal, all such races being expressly prohibited by stat. 18 *G.* 2. *c.* 19. § 2. A wager on a horse-race under 50*l.*

In *Bidmead* v. *Gale*, *E.* 9 *G.* 3. 4 *Burr.* 2432. 1 *Blac. Rep.* 671. S. C., it was agreed between plaintiff and defendant, that each should start his mare, and that if either should refuse, he should forfeit 25*l.* to the other, but the plaintiff was to pay the defendant 5*l.* before hand, as a consideration to induce him to make the match. The defendant afterwards refusing to run the match, the plaintiff brought an action against him for 25*l.* *Perroe* B., before whom the cause was tried, considered this as a match for 50*l.*; and on a motion in arrest of judgment, the court of K. B. were of the same opinion. A match for 25*l.* a side, is a match for 50*l.*

§ 6. The aforesaid penalties to be recovered in the courts at *Westminster*, or at the assizes, and be disposed of, half to him that shall sue, and half to the poor of the parish where the offence shall be committed.

Betting, losing, winning, cheating, and the like, at horse races, are within the statutes of gaming, for which see *ante*, tit. Gaming, § 11.

For Duty on Horses, &c. see tit. Taxes, vol. v.



entered, he may break open any door within the house without any further demand. *Per Gibbs* J., *in Hutchinson* v. *Birch and another*, 4 *Taunt.* 619. If, however, the house is the house of a *stranger* and *not of the defendant*, the officer must be careful to ascertain that the person or the goods (according to the nature of the process) of the defendant are within, before he breaks open any inner door; as if they are not, he will not be justified. *Cooke* v. *Birt*, 5 *Taunt.* 765. *Johnson* v. *Leigh*, 6 *Taunt.* 240.

In a case where an *outward* door was *in part open*, being divided into two parts, the lower latch of which was closed, and the upper part open, and the officer put his arm over the latch to open the part which was closed, upon which a struggle ensued between him and a friend of the prisoner's, and the officer prevailing, the prisoner shot at and killed him, it was held by the judges to be murder. (*a*)

The personal privilege of an individual, in respect to his outward door or window, is confined also to cases where the breach of the house is made in order to arrest *the occupier or any of his* family, who have their domicile, their ordinary residence there; for if a stranger, whose ordinary residence is elsewhere, upon a pursuit take refuge in the house of another, this is not the castle of such stranger, nor can he claim in it the benefit of sanctuary. *Fost.* 320. 5 *Rep.* 93. But it should be observed, that in all cases where the doors of strangers are broken open upon the supposition of the person sought being there, it must be at the peril of finding him there, unless as it seems where the parties act under the sanction of a magistrate's warrant; 2 *Hale*, 103. *Fost.* 321. 1 *East's P. C.* 324. and an officer cannot even enter the house of a stranger, though the door be open, for the purpose of taking the goods of a defendant, but at his peril whether the goods be found there or not; and if they be not found there, he is a trespasser. *Cooke* v. *Birt*, 5 *Taunt.* 765. *per Dallas* J. And it has been decided that a sheriff cannot justify breaking the inner doors of the house of a stranger *upon suspicion* that a defendant is there, in order to search for such defendant and arrest him on mesne process. *Johnson* v. *Leigh*, 6 *Taunt.* 246. See as to demand of entrance, *post*, p. 1037.

For duty on houses, see tit. Taxes, Vol. V. House tax.

House of Correction. See *ante*, tit. Gaols, § xv.

Hue and Cry.

[3 Ed. 1. c. 9. — 18 Ed. 2. — 7 Jas. 1. c. 5. — 7 & 8 G. 4. c. 27.]

LORD *Coke* saith, that hue and cry (called in ancient records *hutesium & clamor*) do mean the same thing: for that *huer* in Meaning of words.

(*a*) *Baker's case*, 1 *Leach*, 112. 1 *East's P. C.* 323. It should be observed, that in this case there was proof of a previous resolution in the prisoner to resist the officer, whom he afterwards killed in attempting to attach his goods in his dwelling-house, in order to compel an appearance in the county court. The point reserved related to the legality of the attachment.

French is to hoot or shout, in *English* to cry. 2 *Inst.* 173. 3 *Inst.* 116.

But since it appeareth by the old books (of which also Ld. *Coke* maketh observation, 2 *Inst.* 173.) that hue and cry was anciently both by horn and by voice, it may seem that these two words are not synonymous, but that this *hutesium* or *hooting* is by the horn, and *crying by the voice;* which also accordeth with the *French* word *hutchet*, which signifies a huntsman's horn; so that hue and cry in this sense will properly signify a pursuit by horn and by voice. Which kind of pursuit of robbers by blowing a horn, and by making an outcry, is said to be practised also in *Scotland.* And this blowing of a horn, by way of notice or intelligence, in other cases as well as in the pursuit of felony, seemeth to have been in use of very ancient time; for amongst the laws of *Wiktred*, king of *Kent*, in the year 696, this is one: that "if a stranger go out of the road, and neither shout nor blow a horn, he shall be taken for a thief."

Hue and cry, what.

Hue and cry is the old common law process after felons, and such as have dangerously wounded any person; and this hath received great countenance and authority by several acts of parliament. 2 *Hale*, 298.

Application to the constable.

When any felony is committed, or any person is grievously and dangerously wounded, or any person assaulted and offered to be robbed, either in the day or night, the party grieved, or any other, may resort to the constable of the vill; and, 1. Give him such reasonable assurance thereof, as the nature of the case will bear. 2. If he know the name of him that did it, he must tell the constable the same. 3. If he know it not, but can describe him, he must describe his person, or his habit, or his horse, or such circumstances as he knows, which may conduce to his discovery. 4. If the thing be done in the night, so that he knows none of these circumstances, he must mention the number of the persons, or the way they took. 5. If none of all these can be discovered, as where a robbery or burglary or felony is committed in the night, yet they are to acquaint the constable with the fact, and desire him to search in his town for suspected persons, and to make hue and cry after such as may be probably suspected, as being persons vagrant in the same night; for many circumstances may *ex post facto* be useful for discovering a malefactor, which cannot be at first found. 2 *Hale*, 100, 101. 3 *Inst.* 116.

Justice's warrant.

For levying hue and cry, although it is a good course to have the warrant (A) of a justice of the peace, when time will permit, in order to prevent causeless hue and cry; yet by the frame of the statutes it is by no means necessary, nor is it always convenient, for the felon may escape before the warrant be obtained, and hue and cry was part of the law before justices of the peace were first instituted. 2 *Hale*, 99.

Constable to raise the town.

The duty of the constable is, to raise the power of the town, as well in the night as in the day, for the prosecution of the offender. 3 *Inst.* 116.

And to search.

And upon hue and cry levied against any person, or where any hue and cry comes to a constable, whether the person be certain or uncertain, the constable may search suspected places within his vill, for the apprehending of the felons. 2 *Hale*, 103.

But though he may search suspected places or houses, yet his entry must be by the doors being open; for he cannot break open doors barely to search, unless the person against whom the hue and cry is levied be there; and then it is true he may; therefore, in case of such search, the breaking open the door is at his peril, namely, justifiable, if he be there; not justifiable, if he be not there. But it must be always remembered that in case of breaking open a door, there must be first a notice given to them within of his business, and a demand of entrance, and a refusal, before the doors can be broken. 2 *Hale*, 103. 2 *Haw. c.* 14. § 1.

Breaking doors to search.

If the person against whom the hue and cry is raised be not found in the constablewick, then the constable shall give notice to the next constable, and he to the next, until the offender be found, or till they come to the sea-side. And this was the law before the conquest. 3 *Inst.* 116.

Notice to the next constable.

And the officer of the town where the felony was done, as also every officer to whom the hue and cry shall afterwards come, ought to send to every other town round about him, and not to one next town only. And in such cases it is needful to give notice in writing (to the pursuers) of the things stolen, and of the colour and marks thereof, as also to describe the person of the felon, his apparel, horse, and the like, and which way he is gone, if it may be. *Dalt. c.* 54.

And to the next.

But if the hue and cry be upon a robbery, burglary, manslaughter, or other felony committed, but the person that did the fact is neither known nor describable by person, clothes, or the like, yet such hue and cry is good, as hath been said, and must be pursued, though no person certain be named or described. 2 *Hale*, 103.

What shall be done where the person cannot be described.

And therefore in this case all that can be done is, for those that pursue the hue and cry to take such persons as they have probable cause to suspect, as, for instance, such persons as are vagrants, or such suspicious persons as come late into their inn or lodgings, and give no reasonable account where they have been, and the like. 2 *Hale*, 103.

By stat. 3 *Ed.* 1. *c.* 9. All shall be ready, and apparelled, at the commandment and summons of sheriffs (or constables, 2 *Inst.* 171.) and at the cry of the county, to sue and arrest felons; on pain of a grievous fine. And if default be found in the lord of the franchise, the king shall take the franchise to himself; and if in the sheriff or other officer, they shall have one year's imprisonment, and shall make a grievous fine.

3 Ed. 1. c. 9. All persons shall follow the hue and cry.

If the person pursued by hue and cry be in a house, and the doors are shut, and refused to be opened on demand of the constable, and notification of his business, he may break open the doors; and this he may do in any case where he may arrest, though it be only a suspicion of felony; for it is for the king and commonwealth, and therefore a virtual *non omittas* is in the case: And the same law is, upon a dangerous wound given, and a hue and cry levied upon the offender. 2 *Hale*, 102., *ante*, p. 1035, 1036.

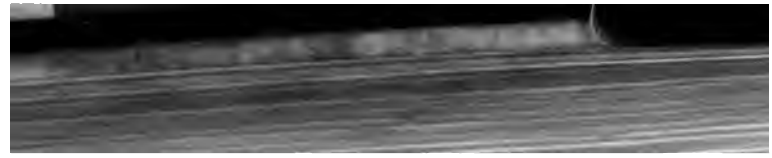
Breaking doors to arrest upon pursuit.

And it seems in this case, that if he cannot be otherwise taken he may be killed; and the necessity excuseth the constable. 2 *Hale*, 102.

Killing in the pursuit.

If hue and cry be raised against a person certain for felony, though possibly he is innocent, yet the constables and those that

Arresting an innocent person.



his assistance, even in this case of hue and cry, may plead the general issue, and give the whole matter of the justification in evidence; for the pursuit of hue and cry, though performed by others as well as the constable, is principally the act of the constable of the vill, and the others are but as his deputies or assistants within the precincts of their constablewick. 2 *Hale*, 101—104.

Persons taken on hue and cry how far bailable.

It seems that they who are taken upon fresh hue and cry are not bailable, as being to be accounted amongst those persons who are under a violent presumption of guilt. 2 *Haw. c.* 15. § 41.

Punishment of those who follow not hue and cry.

And they which levy not hue and cry, or pursue not upon hue and cry, may be indicted, fined, and imprisoned. 3 *Inst.* 117.

And it is an article of the leet to enquire of hues and cries levied and not pursued. 18 *Ed.* 2.

7 & 8 G. 4. c. 27. Former statutes repealed.

Several statutes have been from time to time enacted relative to the making of hue and cry; but by stat. 7 & 8 *G.* 4. *c.* 27. § 1. they are repealed.

And see tit. Hundred, *post*.

A. Warrant to levy hue and cry on a robbery having been committed. See p. 1036.

Westmorland *to wit.* { To all constables and other officers, as well in the said county of *Westmorland* as elsewhere, to whom the execution hereof doth or shall belong.

WHEREAS A. I., *of* ———, *in the county of* ———, *yeoman, hath this day made information upon oath before me* J. P. *esquire, one of his majesty's justices of the peace in and for the said county of* W., *that on this present* ——— *day of* ———, *in the* ——— *year of the reign of* ———, *betwixt the hours of three and four in the afternoon of the same day, at a place called* ———, *in the said county of* W., *in the king's highway there, two malefactors and felons to him the said* A. I. *unknown, in and upon him the said* A. I. *then and there being in the peace of God, and of our lord the king, feloniously did make an assault, and him the said* A. I. *then and there feloniously did put in great fear and danger of his life, and the sum of* ———, *of lawful money of* Great Britain, *of the goods and chattels of him the said* A. I. *from the person and against the will of him the said* A. I., *then and there violently and feloniously did steal, take, and carry away; and that one of the said malefactors and felons, to him the said* A. I. *unknown, is a tall, strong man, and seemeth to be about the age of* ——— *years, is pitted in the face with the small pox, and hath the scar of a wound under his left eye, and had then on a dark brown riding coat, &c. and did ride upon a bay gelding with a star on his forehead, and the other, &c. And that after the said felony and robbery committed, they the said malefactors and felons, to him the said* A. I. *unknown, did fly and withdraw themselves to places unknown, and are not yet apprehended: These are therefore to command you forthwith to raise the power of the towns within your several precincts, and to make diligent search therein for the persons above described, and to make fresh pursuit and hue and cry after them from town to town and from county to county, as well by horsemen as by footmen; and* to give due notice thereof in

writing, describing in such notice the persons and the offence aforesaid, unto every next constable on every side, until they shall come to the sea shore, or until the said malefactors and felons shall be apprehended; and all persons whom you or any of you shall, as well upon such search and pursuit as otherwise, apprehend, or cause to be apprehended, as justly suspected for having committed the said robbery and felony, that you do carry forthwith before some one of his said majesty's justices of the peace in and for the county where he or they shall be so apprehended, to be by such justice examined, and dealt withal according to law. And hereof fail you not respectively, upon the peril that shall ensue thereon. Given under my hand and seal, ————, in the said county of W. *the ——— day of ——— aforesaid, in the year aforesaid.*

Hundred.

[7 & 8 G. 4. c. 27. § 1. — c. 31. § 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16.]

Hundred, whence so called.

IN ancient times, before the conquest, it was ordained, for the more sure keeping of the peace, that all free-born men should cast themselves into several companies, by ten in each company; and that every of those ten men should be surety and pledge for the forthcoming of his fellows. For which cause, these companies in some places were called *Tithings*, as containing the number of ten men with their families; and even as ten times ten do make an hundred, so because it was then also appointed that ten of these companies should at certain times meet together for their matters of greater weight, therefore that general assembly was, and yet is, called an *hundred*. *Lamb. Const.* p. 6.

Tithings.

Hundred to be amerced for an escape.

If any homicide be committed, or dangerous wound given in the day-time, and the offender escape, the town shall be amerced; and if out of the town, the hundred shall be amerced. *2 Hen. c.* 12. § 2.

7 & 8 G. 4. c. 27. Former acts repealed.

By stat. 7 & 8 *G.* 4. *c.* 27. § 1. The former acts then in force relative to remedies against the hundred are repealed.

7 & 8 G. 4. c. 31. Commencement of act.

By stat. 7 & 8 *G.* 4. *c.* 31. § 1. intituled *An act for consolidating and amending the laws in* England *relative to remedies against the hundred*, reciting that it is expedient that the several statutes now in force in that part of the U. K. called *England*, relative to remedies against the hundred for the damage occasioned by persons riotously and tumultuously assembled, should be amended and consolidated into one act; and with that view the said statutes are, by an act of the present session of parliament, repealed, from and after the last day of *June* in the present year, except as to offences and other matters committed or done before or upon that day: it is enacted, that this act shall commence on the first day of *July* in the present year (1827).

The hundred shall make full compensation for the damage done by rioters in certain cases.

§ 2. If any church or chapel, or any chapel for the religious worship of persons dissenting from the united church of *England* and *Ireland*, duly registered or recorded, or any house, stable, coach-house, outhouse, warehouse, office, shop, mill, malt-house, hop oast, barn, or granary, or any building or erection used in

carrying on any trade or manufacture, or branch thereof, or any machinery, whether fixed or movable, prepared for or employed in any manufacture, or in any branch thereof, or any steam engine or other engine for sinking, draining, or working any mine, or any staith, building, or erection used in conducting the business of any mine, or any bridge, waggonway, or trunk for conveying minerals from any mine, shall be feloniously demolished, pulled down, or destroyed, wholly or in part, by any persons riotously and tumultuously assembled together, in every such case the inhabitants of the hundred, wapentake, ward, or other district in the nature of a hundred, by whatever name it shall be denominated, in which any of the said offences shall be committed, shall be liable to yield full compensation to the person or persons damnified by the offence, not only for the damage so done to any of the subjects hereinbefore enumerated, but also for any damage which may at the same time be done by any such offenders to any fixture, furniture or goods whatever, in any such church, chapel, house, or other of the buildings or erections aforesaid. 7 & 8 G. 4. c. 31.

Party damnified to comply with certain conditions.

§ 3. Provided, that no action or summary proceeding, as hereinafter mentioned, shall be maintainable by virtue of this act, for the damage caused by any of the said offences, unless the person or persons damnified, or such of them as shall have knowledge of the circumstances of the offence, or the servant or servants who had the care of the property damaged, shall, within seven days after the commission of the offence, go before some justice of the peace residing near and having jurisdiction over the place where the offence shall have been committed, and shall state upon oath before such justice the names of the offenders, if known, and shall submit to the examination of such justice touching the circumstances of the offence, and become bound by recognisance before him to prosecute the offenders when apprehended: Provided also, that no person shall be enabled to bring any such action, unless he shall commence the same within three calendar months after the commission of the offence.

Limitation of time for actions.

Process in the action against the hundred to be served on the high constable, who may defend, or let judgment go by default, as advised.

§ 4. No process for appearance in any action to be brought by virtue of this act against any hundred or other like district shall be served on any inhabitant thereof, except on the high constable or some one of the high constables (if there be more than one), who shall, within seven days after such service, give notice thereof to two justices of the peace of the county, riding, or division in which such hundred or district shall be situate, residing in or acting for the hundred or district; and such high constable is hereby empowered to cause to be entered an appearance in the said action, and also to defend the same on behalf of the inhabitants of the hundred or district, as he shall be advised; or, instead of defending the same, it shall be lawful for him, with the consent and approbation of such justices, to suffer judgment to go by default; and the person upon whom, as high constable, the process in the action shall be served, shall, notwithstanding the expiration of his office, continue to act for all the purposes of this act until the termination of all proceedings in and consequent upon such action; but if such person shall die before such termination, the succeeding high constable shall act in his stead.

Inhabitants of the hundred,

§ 5. In any action to be brought by virtue of this act against the inhabitants of any hundred or other like district, or against the



7 & 8 G. 4. c. 31.

where the damage does not exceed 30*l*.

that it shall not be lawful for any person to commence any action against the inhabitants of any hundred or other like district, where the damage alleged to have been sustained by reason of any of the offences in this act mentioned shall not exceed the sum of 30*l*., but the party damnified shall, within seven days after the commission of the offence, give a notice in writing of his claim for compensation, according to the form in the schedule hereunto annexed, to the high constable or some one of the high constables (if there be more than one) of the hundred or other like district in which the offence shall have been committed; and such high constable shall, within seven days after the receipt of the notice, exhibit the same to some two justices of the peace of the county, riding, or division, in which such hundred or district shall be situate, residing in or acting for such hundred or district, and they shall thereupon appoint a special petty session of all the justices of the peace of the county, riding, or division, acting for such hundred or district, to be holden within not less than twenty nor more than thirty days next after the exhibition of such notice, for the purpose of hearing and determining any claim which may be then and there brought before them on account of any such damage; and such high constable shall, within three days after such appointment, give notice in writing to the claimant, of the day and hour and place appointed for holding such petty session, and shall within ten days give the like notice to all the justices acting for such hundred or district; and the claimant is hereby required to cause a notice in writing, in the form in the schedule hereunto annexed, to be placed on the church or chapel door, or other conspicuous part of the parish, township, or place in which such damage shall have been sustained, on two *Sundays* preceding the day of holding such petty session.

Such cases to be settled by the justices at a special petty sessions.

§ 9. It shall be lawful for the justices, not being less than two, at such petty session or any adjournment thereof, to hear and examine upon oath or affirmation the claimant, and any of the inhabitants of the hundred or other like district, and their several witnesses, concerning any such offence, and the damage sustained thereby; and thereupon the said justices, or the major part of them, if they shall find that the claimant has sustained any damage by means of any such offence, shall make an order for payment of the amount of such damage to him, together with his reasonable costs and charges, and also an order for payment of the costs and charges (if any) of the high constable or inhabitants, and shall direct such order or orders to the treasurer of the county, riding, or division in which such hundred or district shall be situate, who shall pay the same to the party or parties therein named, and shall be reimbursed for the same in the manner herein-before directed.

Penalty on high constable for neglect.

§ 10. If any high constable shall refuse or neglect to exhibit or give such notice as is required in any of the cases aforesaid, it shall be lawful for the party damnified to sue him for the amount of the damage sustained, such amount to be recovered by an action on the case, together with full costs of suit.

Proceeding in case of damage to a church or chapel.

§ 11. Every action or summary claim to recover compensation for the damage caused to any church or chapel by any of the offences in this act mentioned, shall be brought in the name of the rector, vicar, or curate of such church or chapel, or in case there

§ 13. And, for securing the due execution of writs in the cinque ports, and in places where writs are directed to other officers than the sheriff, and in liberties where the sheriff is not warranted in executing writs, it is enacted, that all other such officers to whom any writ of execution under this act shall be directed, by whatsoever name they shall be known, shall have the same power of granting a warrant for payment of the sum by such writ directed to be levied as is hereby given to the sheriff in case of a writ of execution directed to him; and that every sheriff and other such officer as aforesaid shall have authority to grant his warrant under this act, notwithstanding the offence shall have been committed in, or the treasurer or other person to whom such warrant shall be directed shall reside or be in any liberty where the sheriff or officer is not warranted in executing writs. 7 & 8 G. 4. c. 31. Provision for executing writs in certain places.

§ 14. And as to the mode of payment and reimbursement under this act in such liberties, franchises, cities, towns, and places as contribute to the payment of the county rate, but not as being part of any hundred, it is enacted, that the warrant of the sheriff or other officer upon any writ of execution against the inhabitants of any such liberty, franchise, city, town, or place, and every order of justices for payment to the party damnified therein, or to the peace officer or inhabitants thereof, by virtue of this act, shall be directed to the treasurer of the county, riding, or division in which such liberty, franchise, city, town, or place shall be situate, who is hereby required to pay the same; and the justices of the peace of such county, riding, or division, at their next general or quarter-sessions of the peace, or any adjournment thereof, shall direct such sum or sums of money as shall have been so paid or ordered to be paid by the treasurer to be raised on such liberty, franchise, city, town, or place, over and above the general rate to be paid by the same in common with the rest of the county, riding, or division, under the acts relating to county rates, and such sum or sums shall be raised in the manner directed by those acts, and shall be forthwith paid over to the treasurer. Mode of reimbursement in liberties, cities, and towns not within any hundred, but contributing to the county rate.

§ 15. And as to the mode of payment and reimbursement under this act in counties of cities and towns, and in such liberties, franchises, cities, towns, and places as do not contribute to the payment of the general county rate, it is enacted, that all sums of money payable either by virtue of any warrant of the sheriff or other officer, or of any order or orders arising out of any action or summary claim against the inhabitants of any county of a city or town, or of any such liberty, franchise, city, town, or place, shall be paid out of the rate (if any) in the nature of a county rate, or out of any fund applicable to similar purposes, where there is such a rate or fund therein, by the treasurer or other officer having the collection or disbursement of such rate or fund; and where there is no such rate or fund in such county, liberty, franchise, city, town, or place, the same shall be paid out of the rate or fund for the relief of the poor of the particular parish, township, district, or precinct therein, where the offence was committed, by the overseers or other officers having the collection or disbursement of such last-mentioned rate or fund; and in every such case the warrant Mode of reimbursement in counties of cities, and in liberties, cities, and towns not contributing to any county rate.

Form of Notice to be placed on the church or chapel door or other conspicuous part of the parish, township, or place (*as the case may be*).

I HEREBY give notice, that I shall apply for compensation to the justices of the peace at a special petty sessions to be holden at ——— *on the* ——— *day of* ——— *next, at the hour of* ——— *in the forenoon, on account of the damage which I have sustained by means of* [here state the offence, the time and place where it was committed, and the nature and amount of the damage, in the same manner as in the preceding form]. *Given under my hand this* ——— *day of* ——— *in the year of our Lord* ———.

(*Signed*) A. B.

[And see the statutes of Hue and Cry, *ante*, that title.]

Hunting. See Game, *ante*.

Husband. See Wife, vol. v.

Friendly

[*Vide ante*, p. 524. immedia

Garner v. *Shelley and others*,
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